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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 600

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

MOUNTAIN PRODUCERS CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 24, 1937
CERTIORARI GRANTED JANUARY 3, 1938

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A Caption omitted.

1 Before United States Board of Tax Appeals

Docket No. 44573

MOUNTAIN PRODUCERS CORPORATION, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For Petitioner: Randolph E. Paul, Esq., Harold D. Roberts, Esq., Chas. B. McInnis, Esq. For Respondent: R. P. Hertzog, Esq., C. N. Kitchen, Esq., V. G. Weekley, Esq.

Docket entries

1929

May 13—Petition received and filed. Taxpayer notified. (Fee paid.)

May 14—Copy of petition served on General Counsel.

June 29—Answer filed by General Counsel.

July 2—Copy served on taxpayer—assigned General Calendar.

1931

Nov. 18—Hearing set Feb. 4, 1932.

1932

Jan. 18—Motion for 90 days continuance filed by taxpayer. 1/20/32 granted to May 4, 1932.

April 26—Motion for 90 days continuance filed by taxpayer. 4/27/32 granted to Fall, 1932.

Sept. 13—Hearing set Oct. 27, 1932.

Oct. 8—Motion for 60 days continuance filed by taxpayer. 10/11/32 granted to Dec. 15, 1932.

Dec. 2—Motion for a continuance of 60 days filed by taxpayer. 12/5/32 granted to Feb. 15, 1933.

1933

Feb. 3—Motion for continuance of 90 days filed by taxpayer. 2/6/33 granted to May 15, 1933.

May 6—Motion for continuance to Fall Calendar filed by taxpayer. 5/10/33 granted.

2 1933

Nov. 25—Motion for leave to amend petition, amendment tendered, filed by taxpayer. 11/29/33 granted. 12/5/33 copy served.

1934

Jan. 16—Hearing set 2/19/34.

Jan. 23—Answer to amend petition filed by General Counsel.

Jan. 29—Copy of answer served.

Jan. 30—Motion for circuit hearing at Denver filed by taxpayer. 1/31/34 granted.

Jan. 10—Motion for hearing in Washington, D. C., filed by taxpayer. 1/11/35 granted.
Jan. 10—Stipulation of facts filed.
Jan. 11—Hearing set Jan. 30, 1935.
Jan. 30—(Held over Jan. 31) Hearing had before H. F. Seawell, Division 4. Submitted on merits. Amendment to answer to amended petition, and supplemental stipulation of facts, also appearances of Mr. Roberts and Mr. McInnis. Petitioner's brief due in 40 days (March 12, 1935)—respondent's due 20 days after.
Feb. 2—Second supplemental stipulation of facts filed.
Feb. 6—Transcript of hearing of 1/31/35 filed.
March 9—Motion for extension of 10 days to filed brief filed by taxpayer. 3/12/35 granted to 3/22/35.
March 21—Brief filed by taxpayer. 3/21/35 copy served.
April 10—Brief filed by General Counsel.
April 22—Motion for extension to April 30, 1935, to file reply brief filed by taxpayer. 4/22/35 granted.
April 30—Reply brief filed by taxpayer. 5/1/35 copy served.

1936

April 23—Findings of fact and opinion rendered—Mr. Seawell, Division 4. Decision will be entered under Rule 50.
June 3—Notice of settlement filed by General Counsel.
June 5—Hearing set June 24, 1936, on settlement.
June 24—Hearing had before Mr. McHahon (Seawell) on settlement under Rule 50—not contested—petitioner agrees to respondent's recomputation—referred to Mr. McMahon for decision.

3 1936

June 24—Decision entered—S. J. McMahon, Division 16.
Sept. 14—Petition for review by U. S. Circuit Court of Appeals, 10th Circuit, with assignments of error filed by taxpayer.
Sept. 14—Proof of service filed by taxpayer.
Nov. 12—Motion for extension to 12/15/36 to prepare and transmit record filed by taxpayer.
Nov. 12—Order that time for preparation of evidence and transmission and delivery of record be extended to Dec. 15, 1936, entered.
Dec. 11—Agreed statement of evidence lodged.
Dec. 11—Praecipe filed with proof of service thereon.
Dec. 12—Agreed statement of evidence approved and ordered filed.
Dec. 14—Order enlarging time to Jan. 15, 1937, for transmission and delivery of record entered.

Before United States Board of Tax Appeals

Petition

Filed May 13, 1929

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated March 14, 1929, and as a basis of its proceeding alleges as follows:

I. The petitioner is a Delaware corporation with its principal office at 808 First National Bank Building, Denver, Colorado.

II. The notice of deficiency, a true copy of which is attached hereto and marked Exhibit A, was mailed to the petitioner on March 14, 1929.

III. The taxes in controversy are income and excess profits taxes for the calendar year 1925 and are for $90,642.87, the total amount of the deficiency being in controversy.

IV. The determination of tax set forth in said notice of deficiency is based upon the following error:

(a) Increase of taxable net income of $621,341.94 occasioned by the disallowance of depletion in the amount of $621,341.94 representing the difference between the amount of depletion claimed in the return filed, $2,296,019.86, and the amount of the depletion allowed, $1,674,677.92, the basis for such depletion claimed in the return having been changed by the Commissioner of Internal Revenue.

The decrease of depletion referred to is based upon an incorrect interpretation and application of Section 204 (c) (2) of the Revenue Act of 1926 in that the Commissioner has taken 27½% of the taxpayers' alleged gross income instead of 27½% of the gross income from the property irrespective of ownership, the correct depletion being as hereafter alleged.

V. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) The Wyoming Associated Oil Corporation is and was, at all times hereinafter mentioned, a Delaware corporation with its principal office at 608 First National Bank Building, Denver, Colorado.

(b) During the year 1925, the petitioner was affiliated in a Class "A" relationship with the Wyoming Associated Oil Corporation, within the purview of Section 240 of the Revenue Act of 1926.

(c) In its 1925 return, the Wyoming Associated Oil Corporation claimed depletion on its depletable oil properties in the sum of $2,215,862.23; depletion on state lands amounting to $80,157.63 was not claimed in the return nor was the income from such state lands included in the return.

(d) On the same depletable properties (including state lands), the Commissioner of Internal Revenue has allowed depletion (as indicated in the 60-day letter) in the amount of $1,674,677.92.

(e) The depletable properties of the Wyoming Associated Oil Corporation upon which depletion is allowable for the year 1925 are set forth in Exhibit B attached hereto and incorporated herein by reference as if specifically set forth.

(f) The depletion allowed by the Commissioner of Internal Revenue is as follows:

Trace	Amount of depletion allowed
W½ 12, NW & N½ SW 13–40–79	$82,539.29
S½ SW 13	13,053.35
S½ SE & NW SE 14	46,905.96
SW 14	68,742.18
5 S½ NW & NW NW 14	53,768.70
NE 15	27,143.12
E½ NE SE 15	3,803.32
S½ SE 22	66,202.62
E½ NE 23	45,314.02
NE SE & SW SE 23	40,223.32
SE SW 23	16,310.49
SW SW 23	4,072.80
NE 24	69,541.90
N½ SE 24	56,732.93
N½ SW 24	18,477.22
NW 24	111,392.11
E½ 25	88,706.19
S½ SW 25	30,081.86
W½ NE 26	20,922.59
SE SE 26	13,233.30
SW SE 26	23,137.35
S½ SW 26	8,799.16
E½ NW 26	57,891.09
W½ NW 26	65,657.02
N½ NE 27	42,779.97
S½ NE 34	22,624.25
N½ SE & N½ SW SE 34	41,641.59
S½ NW 34	11,932.18
SE 35	96,568.22
NW 35	97,230.54
All of Sec. 36	45,927.12
N½ SW NW 19–40–78	12,399.91
S½ SW NW 19	9,552.10
SW SE 30	14,995.50
NW SE 30	27,821.04
NE SW & S½ SW 30	39,394.76
NW SW 30	20,440.21
S½ SW NW 30	39,997.20
NW NW & N½ SW NW 30	5,668.43
S½ NW & NW NW 1–39–79	25,082.89
NE 2	80,275.86
SW NW 5–39–78	335.29
600 acres in Sec. 6	7,358.97
Total	1,674,677.92

6 (g) The correct depletion of said depletable properties for the year 1925 is as follows:

Tract	Correct amount of depletion
W½ 12, NW & N½ SW 13–40–79	$108,819.18
S½ SW 13	22,709.86
S½ SE & NW SE 14	65,689.20
SW 14	68,742.18
S½ NW & NW NW 14	55,499.04
NE 15	47,757.92

Tract	Correct amount of depletion
E½ NE SE 15	$6,481.68
S½ SE 22	66,202.62
E½ NE 23	45,314.02
NE SE & SW SE 23	65,424.13
SE SW 23	17,636.90
SW SW 23	4,072.80
NE 24	121,797.28
N½ SE 24	100,145.79
N½ SW 24	18,477.22
NW 24	112,899.12
E½ 25	155,757.41
S½ SW 25	30,081.86
W½ NE 26	36,755.73
SE SE 26	23,070.67
SW SE 26	40,547.88
S½ SW 26	15,551.54
E½ NW 26	101,890.20
W½ NW 26	87,434.01
N½ NE 27	42,779.97
S½ NE 34	33,807.57
N½ SE & N½ SW SE 34	47,707.01
S½ NW 34	11,982.18
SE 35	113,916.43
NW 35	171,788.84
All of Sec. 36	70,842.65
N½ SW NW 19–40–78	21,815.03
S½ SW NW 19	16,485.40
SW SE 30	26,147.59
NW SE 30	47,565.34
NE SW & S½ SW 30	69,713.91
NW SW 30	35,014.52
S½ SW NW 30	9,750.92
NW NW & N½ SW NW 30	70,527.46
7 S½ NW & NW NW 1–39–79	44,091.78
NE 2	113,841.43
SW NW 5–39–78	335.29
600 Acres in Sec. 6	7,358.97
Total	2,374,180.53

(h) Under date of July 18, 1919, the Wyoming Associated Oil Corporation entered into a contract with the Midwest Refining Company by the terms of which the oil lands of the Wyoming Associated Oil Corporation situated in the Salt Creek Oil Fields, Natrona County, State of Wyoming, were subjected to certain rights and privileges granted to the Midwest Refining Company including the right from June 1, 1919, to January 1, 1934, to work such lands and extract oil therefrom, said oil to be paid for at prices indicated in the contract.

(i) A true copy of said contract of July 18, 1919, is attached hereto as Exhibit C.

(j) The gross production in barrels, less Government royalties, the royalties in barrels paid by the Wyoming Associated Oil Corporation, the royalties in barrels paid by the pipe line companies and the net production in barrels from the depletable properties of the Wyoming Associated Oil Corporation for the year 1925 was as set forth in Exhibit D attached hereto, the figures in such exhibit being specifically incorporated herein.

(k) Depletion based on 50% of the net income of the Wyoming Associated Oil Company from the depletable properties amounts to $2,296,711.14, the said amount being made up as set forth in Exhibit E attached hereto, the facts and figures in said exhibit being specifically incorporated herein.

(l) The cost depletion of the depletable properties of the Wyoming Associated Oil Corporation for the year 1925 is as set forth in Exhibit F attached hereto, the facts and figures in said exhibit being specifically incorporated herein.

(m) The gross income from the depletable properties of
8 the Wyoming Associated Oil Corporation for the year 1925 was $9,669,686.08, which gross income is in the amounts stated in Exhibit G attached hereto, the facts and figures in said exhibit being specifically incorporated herein.

(n) The net income of the petitioner for the year 1925 derived from said depletable properties (computed without allowance for depletion) was $4,593,422.28.

VI. Wherefore, the petitioner prays that this Board may hear the proceeding and determine that the 27½% limitation on the amount of the depletion be figured on the basis of the gross income from the properties as set forth in the preceding petition and to give such other and further relief as may seem proper and advisable to this Board.

Respectfully submitted.

RANDOLPH E. PAUL,
Attorney for Taxpayer, 15 Williams St., New York, N. Y.

[Duly sworn to by John T. Barnett; jurat omitted in printing.]

Exhibit A to petition

TREASURY DEPARTMENT,
WASHINGTON, *Mar. 14, 1929.*

MOUNTAIN PRODUCERS CORPORATION,
608 First National Bank Building, Denver, Colorado.

SIRS: In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the year 1925 discloses a deficiency of $90,642.87, as shown in the statement attached.

9 The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, If You Do Not Desire to Petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges,

since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

D. H. BLAIR,
Commissioner.
By C. B. ALLEN,
Deputy Commissioner.

Inclosures: Statement, Form 866, Form 882.

STATEMENT

IT:AR:G-1.
FPN-60D.

Returns examined

Company	Year	From—
Mountain Producers Corporation	1925 1925	1120 (Tentative). 1120 (Original).

This office holds that you are affiliated in a Class A relationship with the Wyoming Associated Oil Corporation for the year 1925, within the purview of Section 240 of the Revenue Act of 1926.

TAX LIABILITY

Company, Mountain Producers Corporation; year, 1925; deficiency, $90,642.87.

In accordance with the agreement to assessment under the provisions of Section 240 (b) of the Revenue Act of 1926, executed by you on January 24, 1929, and filed with this office, the entire tax liability of the consolidated group is assessed against the Mountain Producers Corporation.

The adjustments hereunder are based upon information contained in the Revenue Agent's report covering the year 1925, a copy of which has been furnished you, and other data on file in this office.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1925, the Bureau will be unable to afford you an opportunity under the provisions of Article 1211, Regulations 69, to discuss your case before mailing formal notice of its determination as provided by Section 274 (a) of the Revenue Act of 1926. It is, therefore, necessary at this time, in order to protect the interests of the Government, to issue this formal notice of deficiency.

Payment should not be made until receipt of notice and demand from the Collector of Internal Revenue for your district, and remittance should then be made to him in accordance with the provisions of his notice.

Mountain Producers Corporation. Year ended December 31, 1925.

SCHEDULE 1.—NET INCOME

Net loss as disclosed by return		$ 23,331.10
As corrected (Net loss)		23,281.10
Adjustment: (a) Donations disallowed		$ 50.00

(a) Donations are not an allowable deduction from gross income in arriving at the taxable income.

SCHEDULE 2.—NET INCOME

Net income as disclosed by return		$2,110,579.75
As corrected		2,807,782.57
Net adjustment		$ 697,202.82
Unallowable deductions and additional income:		
(a) Prior year adjustment	$ 2.08	
(b) Prior year adjustment	1,867.47	
(c) Depletion disallowed	541,184.31	
(d) Income from State lands restored	185,438.83	
Total		$ 728,492.69
Nontaxable income and additional deductions:		
(e) Prior year adjustment	$2,121.21	
(f) Taxes on State Lands allowed	5,602.81	
(g) Royalties on State Lands allowed	18,431.11	
(h) Interest on United States obligations exempt	2.08	
(i) Capital stock tax adjustment	167.00	
(j) Adjustment of income from A. D. Aitken, Trustee	4,965.66	
Total		$31,289.87
Net adjustments as above		$697,202.82

EXPLANATION OF ITEM CHANGED

(a) This item was allowed as a deduction in 1922, the year to which it is applicable.

(b) This item was allowed as a deduction in 1924, the year to which it is applicable.

(c) The depletion allowance is adjusted as follows:

Depletion claimed	$2,215,862.23
Depletion allowed	1,674,677.92
Depletion disallowed	[1] $541,184.31

[1] As in the 60-day letter; see, however, Revenue Agent's report showing disallowance.

The computation of the depletion allowance is shown in detail in the Revenue Agent's report.

(d) The Bureau holds that income from leases of which the State of Wyoming is the owner and lessor, is income subject to tax.

(e) This item was taken into consideration in determining the taxable income for 1923.

(f) and (g) Taxes and royalties relative to income from leases of which the State of Wyoming is the owner and lessor, are allowed as deductions, inasmuch as such income has been restored under (d) above.

12 (h) Exempt interest on United States obligations is eliminated.

(i) Net amount of claim for refund of capital stock taxes of $167.00, debited to accounts receivable and credited to expense on your books, is eliminated as taxable income.

(j) Income received from A. D. Aitken, Trustee, is adjusted as shown in detail in Revenue Agent's report.

Mountain Producers Corporation

SCHEDULE 3.—CONSOLIDATED NET INCOME

Net income as corrected: Wyoming Associated Oil Corporation	$2,807,782.57
Net losses as corrected: Mountain Producers Corporation	23,281.10
Consolidated net income for tax purposes	$2,784,501.47

SCHEDULE 4.—COMPUTATION OF TAX

INCOME TAX

Net income for taxable year	$2,784,501.47
Income tax at 13%	361,985.19
Total tax assessable	361,985.19
Tax previously assessed	271,342.32
Additional tax to be assessed	$90,642.87

Exhibit B to petition

Tract	Sec.	T.	R.
W½ 12, N½ SW & NW	13	40	79
S½ SW	13		
S½ SE	14		
NW SE	14		
NE SW & S½ SW	14		
NW SW	14		
S½ NW	14		
NW NW	14		
NE NE & S½ NE	15		
NW NE	15		
E½ NE SE	15		
S½ SE less SE SE SE	22		
SE SE SE	22		
E½ NE	23		
NE SE & SE SE	23		
SE SW	23		
SW SW	23		
NE	24		
NE SE	24		
NW SE	24		
NE SW	24		
NW SW	24		
E½ NW	24		
W½ NW	24		
E½	25		
S½ SW	25		
SW NE	26		
NW NE	26		
SE SE	26		
SW SE	26		
S½ SW	26		
E½ NW	26		
SW NW	26		
NW NW	26		
NE NE	27		
NW NE	27		
S½ NE	34		
NE SE & N½ SW SE	34		
NW SE	34		
S½ NW	34		
NE SE & S½ SE	35		
NW SE	35		
NE NW & S½ NW	35		
NW NW	35		
All	36		
N½ SW NW	19	40	78
S½ SW NW	19		
SW SE	30		
NW SE	30		
NE SW & S½ SW	30		
NW SW	30		
S½ SW NW	30		
N½ SW NW	30		
NW NW	30		
S½ NW	1	39	79
NW NW	1		
NE NE & S½ NE	2		
NW NE	2		
SW NW	5	39	78
Sec.	6		

Exhibit C to petition

This Contract, made and entered into this 18th day of July 1919, by and between the Wyoming Associated Oil Corporation, a corporation of the State of Delaware hereafter called the Producing Company, Party of the First Part, and The Midwest Refining Company,

a corporation of the State of Maine, hereafter called the Refining Company, party of the Second Part, Witnesseth:

That Whereas, the Producing Company is in possession of and owns certain interests in oil lands situated in the Salt Creek Oil Fields, Natrona County, State of Wyoming, and is desirous of entering into an arrangement with the Refining Company for the sale to and purchase by the Refining Company of crude oil hereafter to be produced from said lands; and

Whereas, the Refining Company is the owner of certain
14 refining plants at Casper, Wyoming, and is engaged in the business of purchasing, transporting, refining and marketing crude oil and the products thereof; and

Whereas, the parties hereto mutually desire to effect an agreement establishing for a term of years their relations respecting the production, purchase and sale of crude oil upon the terms and conditions hereinafter set forth:

Now, Therefore, in consideration of the payment of One ($1.00) Dollar and other good and valuable considerations, receipt of which is hereby acknowledged, and mutual benefits derived and to be derived from the faithful performance of the terms and conditions hereinafter set forth, the parties hereto mutually covenant and agree as follows, to-wit:

First: That all said oil lands now in the possession of the Producing Company, or hereafter in the possession of the Producing Company, in said Salt Creek Oil Fields, (Natrona County, Wyoming) shall be and hereby are subjected to the terms and conditions of this agreement.

Second: The Refining Company shall, as from the first day of June 1919 to the first day of January 1934, produce from said lands of the Producing Company and purchase from that Company at least one-third (⅓) of the total amount of oil at any time then being produced or purchased by the Refining Company in or from said Salt Creek Oil Fields (Natrona County, Wyoming), subject, however, to a deduction from said one-third (⅓) of the same amount of oil as may be concurrently deducted from the aggregate deliveries of oil by The Midwest Oil Company to the Refining Company, but in no event shall such deduction exceed one-twelfth ($\frac{1}{12}$) of the total amount of oil at any time then being produced or purchased by the Refining Company in or from said Salt Creek Oil Fields (Natrona County, Wyoming); provided, that at no time shall there be any such deduction except for the purpose of enabling the Refining Company to buy independent crude oil.

The obligations of the Refining Company to take such fraction (one-third) of said oil from the lands of the Producing Company shall continue only so long as the lands of the Producing Company are capable of producing that amount of oil but whenever the Refining Company, either under its now existing contractual obliga-
15 tions or under future modifications or changes thereof, may legally produce from said oil lands of the Producing Company

and purchase from it such quantity of oil in excess of said one-third (⅓) as will make the ratio between the oil purchased from the Producing Company and the total amount of oil produced or purchased by the Refining Company in or from said Salt Creek field more nearly equal the ratio between the estimated oil content of the lands of said Producing Company and the total estimated oil content of such fields, the Refining Company hereby agrees to increase the amount so produced and purchased from time to time up to the full amount of said proportion, and in excess thereof if it so desires.

Third: The Refining Company shall be given and granted, and hereby is given and granted, for the period extending from the first day of June 1919 to and until the first day of January 1934, subject to the forfeiture clause hereinafter set forth, exclusive possession, right of occupation and enjoyment of said oil lands of the Producing Company for the purpose of producing oil therefrom and of purchasing all oil so produced; the Refining Company shall pay all the costs of sinking wells on said lands required to produce said oil, and all expenses of the production, the storage, and the transportation thereof, except that the Refining Company shall have the use of all storage facilities, pipe lines, tools, and machinery now in said fields and used in connection with the development, production, and storage of oil, and of all buildings in connection therewith, and shall have free of charge the oil and gas used in connection with drilling and domestic service on the lands of the Producing Company.

As to the gas produced over and above that used in drilling and domestic service as aforesaid, the Producing Company reserves the right of entry for the purpose of conserving and utilizing the gas and values thereof.

A deduction of three per centum (3%) for moisture and basic sludge shall be allowed upon crude oil.

Fourth: All taxes on all oil produced shall be borne one-half (½) by the Refining Company and one-half (½) by the Producing Company; all taxes on physical property shall be borne by the Refining Company.

Fifth: A—During the period from June 1st, 1919, to June 1st, 1922, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing shall be fixed and determined as follows:

When the average price received for gasoline at said Casper (Wyoming) refinery during any month is eighteen cents (18c) per gallon, and the average price received for Water White Kerosene Oil during said month is seven and one-half cents (7½c) per gallon, the crude oil taken under this contract for said month shall be settled for at the base price of one dollar thirty-two and one-half cents ($1.32½) per barrel. If the average price received by the Refining Company during any month for gasoline at its Casper (Wyoming) Plant, shall be

less or more than eighteen cents (18c) per gallon, then for each cent increase or decrease over or under said sum of eighteen cents (18c) there shall be added to or subtracted from said base price of one dollar thirty-two and one-half cents ($1.32½) five cents (5c) per barrel in order to compute the settlement price of crude oil for said month, and if the said average price received by the Refining Company at its said Casper Plant for Water White Kerosene Oil shall be less or more than seven and one-half cents (7½c) per gallon, then for each cent increase or decrease over or under said sum of seven and one-half cents (7½c) there shall be added to or subtracted from said base price of one dollar thirty-two and one-half cents ($1.32½) two and one-half cents (2½c) per barrel in order to compute the settlement price of crude oil for said month. Decreases or increases of less than one cent (1c) in the price of either Gasoline or Water White Kerosene oil shall be figured proportionately.

B—During the period from June 1st, 1922, to June 1st, 1925, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

On or before the first day of May 1922, the Producing Company shall notify the Refining Company in writing whether the Producing Company elects to accept for the period of three (3) years, beginning June 1, 1922, the price fixed as provided in sub-division A, Paragraph Five, hereof, or to accept for said period a price fixed as in
17 said sub-division A, Paragraph Five, but with a variation in price of crude oil of seven cents (7c) per barrel for each variation of one cent (1c) in the average price of gasoline per gallon, and a variation of three and one-half (3½c) per barrel for each variation of one cent (1c) in the average price of Water White Kerosene Oil per gallon, and the Refining Company shall pay for Crude Oil in accordance with such election.

C—During the period from June 1, 1925, to June 1, 1928, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

On or before the first day of May 1925, the Producing Company shall notify the Refining Company in writing which of the two options as to price set out in subdivision B of this paragraph Five, it elects to accept, and the Refining Company shall pay for Crude Oil in accordance with such election.

D—During the period from June 1, 1928, to June 1, 1931, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

On or before the first day of May 1928, the Producing Company shall notify the Refining Company in writing which of the two options as to price set out in subdivision B of this Paragraph Five

it elects to accept, and the Refining Company shall pay for Crude Oil in accordance with such election.

E—During the period from June 1, 1931, to January 1, 1934, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

On or before the first day of May 1931, the Producing Company shall notify the Refining Company in writing which of the two options as to price set out in subdivision B of this Paragraph Five it elects to accept, and the Refining Company shall pay for Crude Oil in accordance with such election.

It is understood that in no event shall the price paid for Crude Oil hereunder be less than sufficient to enable the said
18 Producing Company to pay all the present existing royalties or charges upon oil produced in said lands.

Six: Payment for oil purchased by the Refining Company from the Producing Company shall be made to the Producing Company at the Producing Company's office on or before the twentieth day of the month succeeding the calendar month in which the oil is produced, provided one-third (⅓) of the total Salt Creek Oil taken into the Casper refinery during the said calendar month, except the so-called "independent oil," shall be paid for and variations between such amount and the actual production of the Producing Company shall be adjusted and settled for at the end of each year of the contract, or sooner if practicable.

Seven: If at any time during the term of this contract the Government, either State or National, shall exact a royalty on any oil taken from the lands of the Producing Company, the Refining Company will either purchase from such Government said royalty oil, or if the Producing Company has purchased said royalty oil the Refining Company will purchase it from the Producing Company at the price paid by the Producing Company for such royalty oil; provided, that the Refining Company shall be given the exclusive right to agree in behalf of the Producing Company with the Government as to the price to be paid for such oil.

Eight: The Refining Company at all times shall operate said lands of the Producing Company in all proper and reasonable ways for the protection and conservation of the oil and gas content thereof, and for the production of the maximum amount of Crude Oil purchasable by the Refining Company hereunder. In the event that the drilling, production, or conservation methods of the Refining Company shall not meet the approval of the Engineer who may be employed by the Directors on the Board of the Producing Company elected by Mary Dean Reed or her nominee, the said Engineer and the Engineer of the Refining Company shall select a third Engineer, and the decision of a majority of these three engineers on any point at issue shall prevail as to the future proceeding on such point. The

Refining Company shall be furnished by the Producing Company with copies of all leases, contracts, and written obligations pertaining to the operation of said lands, or any part thereof, and if in doubt as to the scope or meaning of such leases, contracts, or obliga-
19 tions shall on request be advised by Counsel of the Producing Company in respect thereto, and thereupon the Refining Company shall faithfully perform the terms of all such contracts and leases and sustain such obligations, except that the Refining Company shall not pay any royalties or charges which may be either now fixed upon said lands, or any part thereof, or may be hereafter arranged between said Producing Company, as owner and occupant of said lands or interest therein, and third parties for contracts affecting said lands, or as between the Producing Company as Lessee and its Lessors. From time to time the Producing Company shall notify the Refining Company in writing as to any and all assessment work that should be performed on or in respect to any lands of the Producing Company, and thereupon in due course the Refining Company will perform such assessment work and charge the cost thereof to the Producing Company.

Nine: This agreement shall extend to the titles to said lands of the Producing Company as at present held and as the titles may hereafter be perfected or altered in any way. The Refining Company shall always respect the titles to said lands and interests of the Producing Company and shall take no steps in any way prejudicial thereto; and on the other hand, of for any reason or from any cause whatever the titles of the Producing Company are changed to any form or leasehold, deed or contract differing from the present nature or status of its ownership as to all or any part of said lands, whether greater or less in extent of title or estate, this contract shall extend to such titles in their changed or altered form and such titles and alterations thereof shall be subject hereto; provided, however, that nothing herein conta. d shall be construed to limit the right of the Producing Company to adjust litigation or claims instituted or asserted by other persons affecting the property of the Producing Company, if any such litigation or claims there be, and the Refining Company shall release from the operation of this contract any lands covered hereby and necessary to be released in affecting such adjustment.

Ten: The Producing Company shall pay all expenses in connection with the maintenance and perfection of its own titles, including charges for assessment work.

Eleventh: The Producing Company may at all times main-
20 tain Gaugers and Inspectors upon said lands and shall be furnished by the Refining Company with monthly statements showing:

(a)—The total amount of oil produced from the lands of the Producing Company..

(b)—The entire amount of oil being produced from the Salt Creek Oil Field (Wyoming), itemized as to the respective parcels of land from which said oil has been produced, so far as such information is *reasonable* accessible to the Refining Company.

(c)—The number of barrels of gasoline and Water White Kerosene Oil, respectively, sold by the Refining Company, and the gross price received for each product.

Twelve: Performance shall be excused by acts of God, public enemies, strikes, fires, elemental disturbances, failure of oil supply, unavoidable accidents or causes beyond reasonable control, but, subject to these causes only, if the Refining Company fails to comply with any of the conditions and sustain all obligations imposed upon it hereby and such failure continues for a period of sixty (60) days after notice in writing to the Refining Company from the Producing Company, then the Producing Company may at once declare this contract forfeited and terminated, and without process of law may re-enter upon said premises as of its first and former estate; or, at the option of the Producing Company it may require the Refining Company to continue the operation, insisting upon full compliance by the Refining Company, and any acceptance by the Producing Company of performance less favorable than that to which it is entitled will constitute in no way a waiver of its full rights under the contract.

Thirteen: On the first day of January 1934 possession of all the lands of the Producing Company shall be returned to it by the Refining Company.

Fourteen: This contract shall inure to and be binding upon the successors and assigns of the respective parties hereto.

In Witness Whereof, the parties have caused their respective corporate names to be hereunto signed and their corporate seals to be affixed by their proper officers, thereunto duly authorized, in duplicate, at Denver, Colorado, on the day and year first above written.

WYOMING ASSOCIATED OIL CORPORATION.
By N. S. WILSON, *President.*

Attest:

J. L. WARREN, *Secretary.*

THE MIDWEST REFINING COMPANY,
By T. A. DINES, *Vice President.*

Attest:

C. E. TITUS.

Exhibit D to petition

	Gross less Government royalties	Royalties paid direct	Royalties paid by company	Company net
	Barrels	*Barrels*	*Barrels*	*Barrels*
W½ 12, N½ SW & NW 13-40-79	256, 993. 32	28, 699. 38	6, 360. 61	224, 933. 33
S½ SW 13	63, 037. 63		12, 338. 83	50, 698. 80
S½ SE 14	118, 891. 40	2, 849. 51	3, 839. 72	135, 786. 12
NW SE 14 14	23, 583. 80			
NE SW & S½ SW 14	88, 749. 90	3, 141. 49	2, 793. 33	98, 781. 70
NW SW 14	15, 966. 62			
S½ NW 14	87, 385. 99	5, 729. 58	3, 343. 86	118, 250. 94
NW NW 14	39, 938. 39			
NE NE & S½ NE 15	87, 246. 19		2, 893. 46	102, 323. 24
NE NE 15	17, 970. 51			
E½ NE SE 15	14, 744. 63		405. 47	14, 339. 16
S½ SE less SE SE SE 22	66, 403. 94		1, 937. 20	68, 506. 49
SE SE SE 22	4, 039. 75			
E½ NE 23	100, 803. 92	7, 056. 28	2, 578. 05	91, 169. 59
NE SE & SW SE 23	141, 915. 55	1, 419. 14	3, 863. 64	136, 632. 77
SE SW 23	46, 639. 80	932. 81	8, 203. 95	37, 503. 14
SW SW 23	8, 279. 12	167. 59	225. 80	7, 985. 73
NE 24	277, 653. 55	4, 858. 94	7, 501. 86	265, 292. 75
NE SE 24	50, 900. 62	6, 529. 10	5, 790. 47	205, 316. 57
NW SE 24	166, 735. 52			
NE SW 24	27, 864. 10	1, 463. 61	1, 033. 06	36, 533. 10
NW SW 24	11, 165. 67			
E½ NW 24	103, 167. 59	16, 952. 65	6, 992. 96	247, 296. 24
W½ NW 24	168, 074. 26			
E½ 25	400, 937. 36		59, 764. 76	341, 172. 60
S½ SW 25	55, 147. 72	1, 102. 96	1, 486. 24	52, 558. 52
SW NE 26	32, 847. 52	2, 824. 08	19, 828. 55	71, 483. 47
NW NE 26	61, 288. 58			
SE SE 26	47, 870. 71	1, 426. 12	10, 070. 44	36, 364. 15
SW SE 26	102, 543. 16	3, 076. 31	12, 125. 76	87, 341. 09
S½ SW 26	34, 181. 42		3, 990. 88	30, 190. 54
E½ NW 26	226, 719. 68		6, 234. 80	220, 484. 88
SW NW 26	77, 401. 89		24, 085. 59	173, 091. 36
NW NW 26	119, 775. 06			
NE NE 27	34, 323. 06	6, 019. 60	2, 593. 47	91, 713. 95
NW NE 27	66, 003. 96			
S½ NE 34	78, 572. 90		7, 827. 89	70, 745. 01
E SE & N½ SW SE 34	63, 455. 03		2, 961. 64	104, 735. 02
NW SE 34	44, 241. 63			
S½ NW 34	17, 942. 72		493. 42	17, 449. 30
NE SE & S½ SE 35	171, 889. 73		7, 071. 11	250, 060. 14
NW SE 35	85, 241. 52			
22 NE NW & S½ NW 35	401, 817. 88		107, 387. 34	343, 528. 52
NW NW 35	49, 097. 98			
All 36	177, 177. 72		4, 872. 39	172, 305. 33
N½ SW NW 19-40-78	44, 553. 01	779. 68	1, 053. 68	42, 719. 65
S½ SW NW 19	32, 202. 61	718. 40	727. 52	30, 756. 69
SW SE 30	50, 086. 48	876. 54	1, 184. 54	48, 025. 40
NW SE 30	93, 342. 31	2, 068. 07	2, 109. 18	89, 065. 06
NE SW & S½ SW 30	135, 843. 79	2, 377. 32	3, 212. 71	130, 253. 76
NW SW 30	69, 692. 80	1, 573. 21	1, 570. 46	66, 549. 13
S½ SW NW 30	19, 692. 02	344. 62	465. 71	18, 881. 69
N½ SW NW 30	24, 956. 74	3, 085. 98	3, 009. 57	128, 030. 94
NW NW 30	109, 169. 75			
S½ NW 1-39-79	101, 671. 48	23, 530. 19	9, 812. 53	89, 153. 22
NW NW 1	20, 824. 46			
NE NE & S½ NE 2	178, 576. 03		21, 158. 52	229, 964. 08
NW NE 2	72, 546. 57			
SW NW 5-39-78	2, 870. 37			2, 870. 37
Sec. 6	31, 874. 95			31, 874. 95
	5, 324, 532. 62	126, 613. 16	385, 200. 97	4, 812, 718 49

Exhibit E to petition

Tract		*50% Net Income*
W½ 12, NW and N½ SW	13–40–79	$108,819.18
S½ SW	13	22,709.86
S½ SE and NW SE	14	65,689.20
SW	14	46,167.86
S½ NW and NW NW	14	55,499.04
NE	15	47,757.92
E½ NE SE	15	6,481.68
S½ SE	22	30,860.21
E½ NE	23	43,026.95
NE SE and SW SE	23	65,424.13
SE SW	23	17,636.90
SW SW	23	3,575.18
NE	24	121,797.28
N½ SE	24	100,145.79
N½ SW	24	16,385.91
NW	24	112,899.12
E½	25	155,757.41
S½ SW	25	23,993.59
W½ NE	26	36,755.73
SE SE	26	23,440.41
SW SE	26	40,547.88
S½ SW	26	15,551.54
E½ NW	26	101,890.20
W½ NW	26	87,434.01
23 N½ NE	27	41,447.76
S½ NE	34	33,807.57
N½ SE and N½ SW SE	34	47,707.01
S½ NW	34	7,992.94
SE	35	113,916.43
NW	35	171,788.84
All of Sec.	36	70,842.65
N½ SW NW	19–40–78	21,951.77
S½ SW NW	19	16,930.40
SW NE	30	26,561.52
NW SE	30	49,339.05
NE SW and S½ SW	30	69,713.91
NW SW	30	36,245.28
S½ SW NW	30	10,048.89
NW NW and N½ SW SW	30	70,797.59
S½ NW and NW NW	1–39–79	44,091.78
NE	2	113,841.43
SW NW	5–39–78	—3,592.59
600 acres in Sec.	6	3,031.93
		2,296,711.14

Tract	Reserves 1-1-25	Cost 1-1-25	Cost added 1925	Unit cost	3-1-13 Appreciation	Unit appreciation	Production 1925	Depletion cost	Depletion appreciation
W½ 12, NW and N½ SW 13-40-79	1,101,428.04	364,977.14		0.33137	39,191.75	0.03558	224,933.33	74,536.16	8,003.13
S½ SW 13	389,804.22	6,545.27		0.01679	451.75	0.00116	50,098.80	851.23	58.81
S½ SE and NW SE 14	1,245,492.34	379,477.66		0.30468	50,766.00	0.04076	135,786.12	41,371.32	5,534.64
SW 14	773,149.23	471,319.20		0.60961	66,716.24	0.08629	98,781.70	60,218.31	8,523.87
S½ NW and NW NW 14	623,360.71	246,897.58		0.39607	36,547.15	0.05863	118,250.94	46,935.65	6,933.05
NE 15	649,578.47	93,008.73		0.14318	6,998.51	0.01077	102,323.24	14,650.64	1,102.02
E½ NE SE 15	47,052.89	11,064.32		0.23515	1,415.87	0.03009	14,339.16	3,371.85	431.47
S½ SE 22	261,083.59	218,131.63		0.83549	34,169.95	0.13088	68,506.49	57,236.49	8,966.13
E½ NE 23	591,639.46	265,757.68		0.44919	28,305.61	0.04784	91,169.59	40,952.47	4,361.55
NE SE and SW SE 23	1,315,504.08	345,822.70	4,687.50	0.26645	36,761.05	0.02794	136,632.77	36,405.80	3,817.52
SE SW 23	420,758.41	161,533.63		0.38391	21,458.67	0.05100	37,503.14	14,397.83	1,912.66
SW SW 23	278,142.15	128,220.76		0.46099	13,635.41	0.04902	7,985.73	3,681.34	391.46
NE 24	1,362,449.37	126,887.95	9,375.00	0.10001	9,021.05	0.00662	265,292.75	26,531.93	1,756.24
N½ SE 24	909,993.30	171,417.50	4,687.50	0.19352	16,522.48	0.01816	205,316.57	39,732.86	3,728.55
N½ SW 24	700,147.67	314,975.78		0.44987	38,938.90	0.05562	36,533.10	16,444.14	2,033.08
NW 24	1,368,621.79	551,453.26		0.40293	65,025.25	0.04751	247,296.24	99,643.07	11,749.04
E½ 25	1,932,023.65	227,801.28		0.11791	24,736.89	8.01280	341,172.60	40,227.66	4,367.01
S½ SW 25	746,672.04	374,412.19		0.50144	52,947.25	0.07091	52,558.52	26,354.94	3,726.92
W½ NE 26	1,845,787.72	295,133.99		0.15990	33,300.10	0.01804	71,483.47	11,430.21	1,289.56
SE SE 26	503,095.99	107,560.29		0.21380	13,325.73	0.02649	36,364.15	7,774.66	963.29
SW SE 26	1,206,001.61	97,253.47		0.08064	11,635.88	0.00965	87,341.09	7,043.19	842.84
S½ SW 26	1,918,301.61	242,263.44		0.12629	−6,219.16	0.00324	30,190.54	3,812.76	−97.82
E½ NW 26	2,015,046.96	397,682.09		0.19736	42,442.92	0.02106	220,484.88	43,514.90	4,643.41
W½ NW 26	1,091,619.06	368,808.34		0.33785	45,274.09	0.04147	173,091.36	58,478.92	6,178.10
N½ NE 27	424,707.26	174,674.71		0.41128	23,429.83	0.05517	91,713.95	37,720.11	5,059.86
S½ NE 34	940,657.62	261,835.07		0.27852	38,831.21	0.04128	70,745.01	19,703.90	2,920.35
N½ SE and N½ SW SE 34	733,232.21	255,980.24		0.34911	35,544.78	0.04848	104,735.02	36,564.04	5,077.55
S½ NW 34	63,580.98	41,229.50		0.64846	2,248.39	0.03536	17,449.30	11,315.17	617.01
SE 35	1,976,992.66	674,338.28		0.34109	89,139.52	0.04509	250,060.14	85,293.01	11,275.21
NW 35	3,942,033.87	542,841.29		0.13771	65,954.84	0.01673	343,528.52	47,307.31	5,747.23
All of Sec. 36	789,696.67	174,745.66		0.22128	23,759.82	0.03009	172,305.33	38,127.72	5,184.67
N½ SW NW 19-40-78	250,981.54	12,943.05		0.05157	236.74	0.00094	42,719.65	2,203.05	40.16
S½ SW NW 19	199,578.90	43,043.15		0.21567	3,441.71	0.01724	30,756.69	6,633.30	530.25
SW SE 30	207,859.60	24,074.85		0.11582			48,025.40	5,562.30	
NW SE 30	443,181.49	74,781.83		0.16874	5,831.64	0.01316	89,065.06	15,028.84	1,172.10
NE SW and S½ SW 30	979,837.96	102,717.13		0.10483	2,512.78	0.00256	130,253.76	13,654.50	333.45
NW SW 30	495,508.34	73,754.72		0.14885	5,707.79	0.01152	66,649.13	9,905.84	766.65
S½ SW NW 30	330,188.74	18,252.17		0.05528	408.83	0.00124	18,881.69	1,043.78	23.41
NW NW and N½ SW NW 30	931,702.36	131,603.79		0.14125	10,187.55	0.01093	128,030.94	18,084.37	1,399.38
S½ NW and N NW 1-39-79	484,837.30	101,576.23		0.20951	10,831.26	0.02234	89,153.22	18,678.49	1,991.68
NE 2	1,014,100.24	311,403.39		0.30707	42,598.82	0.04201	229,964.08	70,615.07	9,660.79
SW NW 5-39-78	7,972.99	931.33		0.11681			2,870.37	335.29	
600 acres in Sec. 6	84,869.04	19,188.90		0.22610	405.18	0.00477	31,874.95	7,206.93	152.04
	37,598,274.13	9,008,322.17	18,750.00		1,044,440.03		4,812,718.49	1,220,481.35	144,168.32

Tract Sec. T R	Gross value of oil	Royalties paid direct	Royalties paid by company	Gross income from oil	Gross income from gas	Total gross income
W½ 12, N½ SW & NW 13-40-79	444, 360. 05	44, 997. 94	6, 422. 43	192, 939. 68	16, 893. 97	409, 833. 65
S½ SW 13	116, 701. 45		11, 420. 61	105, 280. 64	1, 226. 86	106, 507. 50
S½ SE 14						
NW SE 14	255, 724. 60	5, 146. 69	3, 694. 34	246, 683. 77	8, 875. 04	255, 558. 81
NE SW & S½ SW 14						
NW SW 14	180, 932. 67	5, 493. 00	2, 835. 36	172, 604. 31	2, 981. 02	175, 585. 33
S½ NW 14						
NW NW 14	220, 578. 33	10, 031. 26	3, 333. 30	207, 213. 77	6, 438. 52	213, 652. 29
NE NE & S½ NE 15						
NW NE 15	189, 637. 81		2, 912. 14	186, 725. 67	3, 880. 47	190, 606. 14
E½ NE SE 15						
S½ SE less SE SE SE 22	24, 958. 59		408. 52	24, 550. 07	51. 32	24, 601. 39
SE SE SE 22	125, 225. 64		1, 958. 16	123, 267. 48		123, 267. 48
E½ NE 23						
NE SE & SW SE 23	175, 678. 75	12, 455. 13	2, 587. 84	160, 635. 78	5, 025. 14	165, 660. 92
SE SW 23	242, 311. 34	2, 465. 52	6, 159. 21	233, 686. 61	9, 630. 88	243, 317. 49
SW SW 23	84, 067. 88	1, 692. 94	7, 802. 94	74, 572. 00	918. 30	75, 490. 30
NE 24	14, 663. 44	298. 07	227. 20	14, 138. 17		14, 138. 17
NE SE 24	531, 422. 51	9, 333. 45	7, 585. 24	514, 503. 82	6, 178. 46	520, 682. 28
NW SE 24						
NE SW 24	382, 883. 56	11, 679. 40	5, 891. 48	365, 312. 68	14, 330. 34	379, 643. 02
NW SW 24						
E½ NW 24	69, 853. 43	2, 624. 11	1, 040. 35	66, 218. 97	1, 230. 87	67, 449. 84
W½ NW 24						
E½ 25	487, 620. 96	30, 831. 62	7, 054. 76	449, 734. 56	5, 030. 96	454, 765. 52
S½ SW 25	724, 525. 85		90, 070. 22	634, 455. 63	6, 910. 63	641, 366. 26
SW NE 26	97, 175. 21	1, 963. 99	1, 480. 09	93, 731. 13	1, 506. 08	95, 237. 21
NW NE 26	168, 534. 74	5, 136. 71	13, 466. 13	149, 931. 90	294. 94	150, 226. 84
SE SE 26	82, 212. 96	2, 493. 15	5, 731. 38	72, 988. 43	10, 904. 90	83, 893. 33
SW SE 26	186, 001. 42	5, 611. 67	8, 571. 83	171, 817. 92		171, 817. 92
S½ SW 26	57, 853. 23		2, 813. 57	55, 039. 66	2, 738. 47	57, 778. 13
E½ NW 26	406, 466. 93		6, 293. 91	399, 173. 02	5, 525. 03	404, 698. 05
SW NW 26						
NW NW 26	341, 172. 39		16, 929. 25	324, 243. 14	8, 340. 54	332, 583. 68
NE NE 27						
NW NE 27	178, 071. 72	10, 811. 36	2, 641. 64	164, 618. 72		164, 618. 72
S½ NE 34	143, 303. 47		4, 939. 05	138, 364. 42	1, 251. 00	139, 615. 42
NE SE & N½ SW SE 34						
NW SE 34	184, 950. 12		2, 986. 60	181, 963. 52	1, 039. 28	183, 002. 80
S½ NW 34	31, 184. 66		499. 48	30, 685. 18	214. 97	30, 900. 15
NE SE & S½ SE 35						
NW SE 35	470, 592. 57		7, 122. 87	463, 469. 70	3, 917. 21	467, 386. 91

Exhibit G to petition—Continued

Tract	Sec.	T	R	Gross value of oil	Royalties paid direct	Royalties paid by company	Gross income from oil	Gross income from gas	Total gross income
NE NW & S½ NW	35			713,010.84		87,661.21	625,349.63	16,290.58	641,640.21
NW NW	35								
All	36			896,414.17		5,646.52	890,767.65	6,507.06	897,364.71
N½ SW NW	19	40	78	81,180.47	1,434.31	1,070.43	78,675.73	651.64	79,327.37
S½ SW NW	19			61,277.57	1,382.86	756.23	59,138.46	808.45	59,946.91
SW SE	30			95,268.85	1,692.22	1,239.25	92,337.38	2,744.75	95,082.13
NW SE	30			175,532.41	3,942.94	2,184.18	169,405.29	3,559.57	172,964.86
NE SW & S½ SW	30			256,286.85	4,525.13	3,307.66	248,454.06	5,145.28	253,599.34
NW SW	30			130,345.28	2,974.42	1,621.37	125,749.49	1,576.04	127,325.53
S½ SW NW	30			35,532.48	626.43	473.07	34,432.98	1,024.92	35,457.90
N½ SW NW	30			262,413.03	6,099.25	3,107.66	253,206.12	3,257.37	256,463.49
NW NW	30								
S½ NW	1	39	79	218,150.88	36,331.84	6,239.92	175,579.12	2,935.42	178,514.54
NW NW	1								
NE NE & S½ NE	2			468,083.91		13,910.16	454,173.75	10,382.51	464,556.26
NW NE	2								
SW NW	5	39	78	5,017.50			5,017.50	909.70	5,927.20
Sec.	6			54,478.59			54,478.59	3,151.49	57,630.08
				10,070,659.31	222,075.41	363,267.80	9,485,316.10	184,369.98	9,669,686.03

27 Before United States Board of Tax Appeals

Answer

Filed June 29, 1929

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations contained in paragraph I of the petition.

(2) Admits the allegations contained in paragraph II of the petition.

(3) Admits the allegations contained in paragraph III of the petition.

(4) Denies the respondent erred in the determination of the deficiency as alleged in paragraph IV (a) of the petition.

(5) Admits the allegations contained in subparagraphs (a) to (f), inclusive, of paragraph V of the petition, denies the allegations contained in subparagraphs (g) to (n), inclusive, of paragraph V of the petition.

Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel: Maxwell E. McDowell, Frank B. Schlosser, Special Attorneys, Bureau of Internal Revenue.

Before United States Board of Tax Appeals

Amended petition

Filed Nov. 29, 1933

The above-named petitioner, by leave of the Board first obtained, hereby makes this its amended petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated March 14, 1929, and as a basis of its proceeding alleges as follows:

I. Petitioner is a Delaware Corporation, with its principal office at 607 First National Bank Building, Denver, Colorado.

28 II. The notice of deficiency, a true copy of which is attached hereto and marked "Exhibit A," was mailed to the taxpayer on March 14, 1929. The taxes in controversy are income taxes for the calendar year 1925 and are for $90,642.87, the total amount of the deficiency being in controversy and the taxpayer being

entitled to a refund of tax already paid by it and its affiliate, The Wyoming Associated Oil Corporation.

ASSIGNMENT OF ERRORS

III. The determination of tax set forth in said notice of deficiency is based on the following errors:

A. The decrease in the amount of depletion deduction of the Wyoming Associated Oil Corporation from $2,215,862.23 (which does not include depletion on Wyoming School lease Section 36, such depletion being omitted from the return) to $1,674,677.92 (which includes depletion on Section 36, shown in Exhibit B attached hereto), this reduction of depletion being based upon an incorrect interpretation and application of Section 204 (c) (2) of the Revenue Act of 1926 in that the depletion computed in the deficiency letter has been based upon 27½% of an incorrectly computed gross income, the true gross income of the Wyoming Associated Oil Corporation from the properties being substantially in excess of the amount calculated by the Commissioner of Internal Revenue and used as a basis for depletion.

B. The increase of the net taxable income of the Wyoming Associated Oil Corporation by the restoration thereto of $185,438.83, so-called income from state lands, whereas all proceeds from state lands leased by the taxpayer are exempt from tax under the decision of the United States Supreme Court in Burnett v. Coronado Oil & Gas Company, 285 U. S. 393.

C. The failure to allow as a deduction in computing the net income of Wyoming Associated Oil Corporation and the consolidated net income of it and the petitioner depletion based upon the cost of its depletable properties to Wyoming Associated Oil Corporation and/or the basis for depletion in the hands of the respective transferrors of said properties to Wyoming Associated Oil Corporation, including the costs to said transferrors, the value at the date of gifts or transfers in trust to said transferrors before December 31, 1920, and
29 the value at the date of death of properties acquired by said transferrors by request, devise, or inheritance.

STATEMENT OF FACTS

IV. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(1) The Mountain Producers Corporation was organized on May 12, 1920, under the laws of the State of Delaware, and was at all times hereinafter mentioned a Delaware corporation with its principal office at 607 First National Bank Building, Denver, Colorado.

(2) The Wyoming Associated Oil Corporation was organized on July 17, 1919, under the laws of the State of Delaware, and was, at all times hereinafter mentioned, a Delaware corporation, with its principal office at 607 First National Bank Building, Denver, Colorado.

(3) During and throughout the year 1925 the petitioner owned and held all the capital stock of Wyoming Associated Oil Corporation and was throughout said year affiliated in a Class A relationship with the Wyoming Associated Oil Corporation within the purview of Section 240 of the Revenue Act of 1926.

(4) The petitioner and the Wyoming Associated Oil Corporation filed for the year 1925 affiliated income tax returns on form 1120 and the deficiency letter of March 14, 1929, Exhibit A hereto attached, treats said corporations upon a consolidated basis.

(5) Prior to 1911 one William M. Fitzhugh, Mary Fitzhugh (his wife), William G. Henshaw, and certain other individuals, comprising a partnership or joint adventure, owned and held (a) certain titles, placer mining claims, and interests relating to located lands (sometimes referred to hereinafter as "the located lands"), (b) certain interests in a lease agreement relating to patented lands (sometimes referred to hereinafter as the "Stock Oil Company agreement"), and (c) a lease from the State of Wyoming of and to Section 36-40-79 (sometimes referred to hereinafter as the "school section land") in the Salt Creek Field, Natrona County, Wyoming, all of said claims, interests, and leases being sometimes referred to herein as "properties." The interests of the said individuals were undivided; said Fitzhugh and his wife owned ⅜ and Mr. Henshaw and his associates owned ⅝. A map showing the lands referred to above is attached hereto and is marked Exhibit C.

(6) On or about June 3, 1911, said William M. Fitzhugh and his wife sold and transferred to The Midwest Oil Company their undivided interest in and to said properties mentioned in paragraph (5).

(7) During the same year, and within a few months thereafter, said William G. Henshaw and his associates sold and transferred their undivided interest in said properties to The Reed Investment Company, acting as agent or trustee, as alleged in paragraph (10) hereof.

(8) On or about July 14, 1911, The Midwest Oil Company and The Reed Investment Company agreed to a partition and division of said properties mentioned in paragraph (5), including said school section land, wherein and whereby a specified 37½% of the school section land; a specified 37½% of said Stock Oil Company lease, and the NW¼ of each quarter section of located lands were to be turned over to The Midwest Oil Company and the remaining acreage was to be turned over to The Reed Investment Company. The said properties were divided and partitioned in accordance with said agreement.

(9) At about the same time The Reed Investment Company acquired through other sources an undivided one-half interest in a lease covering 80 acres of patented land in the Salt Creek Field, commonly known as the "Iba 80," being the S½ of the SW¼ of Section 13-40-79. A map showing the division of the above prop-

erties is attached hereto and marked Exhibit D. This map also reflects the loss of certain tracts to both parties resulting from settlements of title defect controversies, some of which settlements were of later date than July 14, 1911.

(10) In the transactions described in the foregoing paragraphs, The Reed Investment Company was acting, not for itself, but as agent or trustee for two groups of individuals, referred to hereinafter as the Majority and Minority Groups. The Majority Group consisted of the late Verner Z. Reed, and the Minority Group consisted of O. H. Shoup, B. H. Hopkins, K. C. Schuyler, and other individuals. The Majority Group owned an interest of 64.125% and the Minority Group, an interest of 35.875%.

31 (11) Pursuant to the rights and demands of the principals or beneficiaries for whom it was acting, The Reed Investment Company duly instructed and authorized that the legal title to all of said properties be conveyed, and the same was conveyed, to a group of corporations, to-wit:

The Control Oil Company,
The Crescent Oil Company,
The Seattle Oil Company,
The Bluestone Oil Company,
The California Oil Company,
The Henshaw Oil Company,
The Fitzhugh Oil Company,
The Pinero Oil Company,
The Barbadoes Oil Company, and
The Castle Creek Oil Company.

This transfer to said corporations was absolute in form, but was subject to the reservation that the ownership of the oil contained in the lands conveyed should remain in individuals who were the stockholders of said corporations, this ownership of said oil content being confirmed by a formal declaration of trust executed by each of the corporate grantees. The outstanding stock of said corporations was owned and held by the members of the Majority and Minority Groups in proportion to their respective interests in said groups.

(12) The said Verner Z. Reed on February 2, 1914, disposed of a 5% interest of his 64.125% interest in the said properties and transferred the same to The Equitable Trust Company of New York, as trustee for his daughter, Margery V. Reed.

(13) The said Verner Z. Reed, on February 2, 1914, disposed of a 5% interest of his 64.125% interest in the said properties and transferred the same to The Equitable Trust Company of New York, as trustee of his son, Verner Z. Reed, Jr.

(14) The said Verner Z. Reed, on February 2, 1914, disposed of a 5% interest of his 64.125% interest in the said properties and transferred the same to The Equitable Trust Company of New York, as trustee for his son, J. V. Reed.

32 (15) On or about April 3, 1914, said Verner Z. Reed gave absolutely, and transferred pursuant to said gift, to his wife, Mary Dean Reed, a 5% interest of his 64.125% interest in said properties.

(16) On July 10, 1916, said Verner Z. Reed disposed of a 9% interest of his 64.125% interest in said properties and transferred the same to The Equitable Trust Company as trustee of Trust No. 1.

(17) On July 10, 1916, said Verner Z. Reed disposed of a 9% interest of his 64.125% interest in said properties and transferred the same to The Equitable Trust Company as trustee of Trust No. 2.

(18) Said Verner Z. Reed died on or about April 20, 1919. At the time of his death he still owned 26.125% remaining out of said 64.125% interest. Said 26.125% interest passed to the executors under his will.

(19) On or about October 3, 1917, the members of said Minority Group transferred their several interests in said lands, aggregating 35.875%, to the Midwest Refining Company, and received in exchange therefor in proportion to their respective interests as members of the group, 11,402 shares of stock of The Midwest Refining Company.

(20) Subsequently, and in the month of January 1919, The Midwest Refining Company transferred to Salt Creek Producers Association, Inc., the properties so acquired as aforesaid from the Minority Group, together with certain other properties, including certain Curtis, Townsend, and Lobell, and other adverse or conflicting titles to the same properties in the Salt Creek Field, and received in exchange therefor 372,633 shares of stock of said Salt Creek Producers Association, Inc. At the time of this exchange the stock of the Salt Creek Producers Association, Inc., had a fair market value of not less than $25 per share.

(21) The exchange described in paragraph (20) has been recognized by the Commissioner as a taxable transaction, and The Midwest Refining Company has been charged with and has paid income and profits tax on and with respect to said transaction.

33 (22) At the time of the organization of the Wyoming Associated Oil Corporation in July 1919, the Salt Creek Producers Association, the members of the Majority Group, and their successors in interest, by reason of said trusts, gift, and death of Verner Z. Reed, and the several corporations enumerated in paragraph (12) to (20) inclusive hereof, transferred to the Wyoming Associated Oil Corporation all their right, title, and interest in and to all of said properties acquired from William G. Henshaw as alleged in paragraph (7) hereof, together with the properties referred to in paragraph (9), and the said Salt Creek Producers Association also transferred to said Wyoming Associated Oil Corporation all its right, title, and interest in and of said conflicting or adverse titles referred to in paragraph (20) hereof and commonly known as the Curtis, Townsend, and Lobell titles, and all the stock of certain corporations in which said adverse and conflicting titles were deposited,

receiving in exchange (a) for the said properties formerly owned by the Majority and Minority Groups 300,000 shares of stock of the Wyoming Associated Oil Corporation and (b) for the said conflicting or adverse titles, and the stock of the corporations in which the same had been deposited, 50,000 shares of said stock. The said stock of the Wyoming Associated Oil Corporation had no par value. A list of the various properties transferred to the Wyoming Associated Oil Corporation, referred to above, is attached hereto and marked Exhibit E–1. Attached hereto as Exhibit E–2 is a map showing said properties.

(23) The exchange described in paragraph (22), to the extent that the said adverse or conflicting titles were transferred for 50,000 shares of stock of the Wyoming Associated Oil Corporation, has been recognized by the Commissioner as a taxable transaction, and the Salt Creek Producers Association, Inc., has paid income and profits tax on and with respect to said transaction.

(24) In the years 1920 and 1921, Government leases were obtained by the Wyoming Associated Oil Corporation in exchange for and in lieu of the placer mining claims on located lands acquired by the corporation at the time of its organization.

(25) On or about February 1, 1923, Wyoming Associated Oil Corporation, The Midwest Oil Company, and the Wyoming
34 Oil Fields Company, entered into a contract wherein and whereby the said companies exchanged with and among each other certain interests in property and leases in the Salt Creek field for other interests in property and leases owned by them respectively. A list of the interests and leases owned by the Wyoming Associated Oil Corporation before said exchange is attached hereto and marked Exhibit F–1. Attached hereto as Exhibit F–2 is a map showing said properties.

A list of the interests and leases owned by the Wyoming Associated Oil Corporation after said exchange is attached hereto and marked Exhibit G–1. Attached hereto as Exhibit G–2 is a map showing said properties.

The interests and leases appearing on the first of said lists and not on the second were surrendered on the exchange, and the interests and leases appearing on the second of said lists and not on the first were received on the exchange. The interests and leases on both lists were not involved in the exchange.

(26) In the years 1919 to 1924, inclusive, various properties in the Salt Creek field were purchased and acquired by the Wyoming Associated Oil Corporation as listed in Exhibit H–1 attached hereto and shown on the map attached hereto as Exhibit H–2.

Other properties were sold and disposed of as listed in Exhibit I–1 attached hereto, and shown on the map attached hereto as Exhibit I–2.

The result of said transactions was that at the beginning of 1925 Wyoming Associated Oil Corporation owned and was entitled to depletion for that year with respect to the properties and leases listed

in Exhibit N–1 attached hereto and shown on the map attached hereto as Exhibit N–2.

Said properties included a 50% undivided interest in said lease from the State of Wyoming covering said Section 36, a state school section.

(27) On or about February 1, 1923, the Wyoming Associated Oil Corporation, The Midwest Oil Company, and the Wyoming Oil Fields Company as producing oil companies, entered into a contract with The Midwest Refining Company wherein and whereby for the consideration stated in said contract The Midwest Refining Company agreed to purchase the oil from and on behalf of Wyoming Associated Oil Corporation, to perform certain acts respecting certain of said properties, including said school section 36, for a period ending at noon on the first day of January 1934, a true copy of said contract being annexed hereto as Exhibit J and made a part hereof for all intents and purposes. On said same date of February 1, 1923, Wyoming Associated Oil Corporation and The Midwest Refining Company entered into a similar contract relating to the other properties of Wyoming Associated Oil Corporation. A true copy of said contract is annexed hereto as Exhibit K and made a part hereof.

(28) The lease agreement in effect during the calendar year 1925 wherein and whereby the State of Wyoming leased to the Wyoming Associated Oil Corporation its said part of Section 36 in said Salt Creek field is dated April 19, 1923, and runs for the period commencing October 1, 1924, and ending September 30, 1929. A copy of said lease is attached hereto as Exhibit L.

(29) On or about February 1, 1923, The Midwest Oil Company executed in favor of the Wyoming Associated Oil Corporation a declaration of trust with respect to the then outstanding lease in Section 36 in the State of Wyoming. Said declaration of trust applies to all renewals thereof, and said lease, Exhibit L, is and was a renewal of the preceding lease in effect when said declaration of trust was executed. A copy of said declaration of trust is attached hereto as Exhibit M.

(30) In the taxable year 1925 the Wyoming Associated Oil Corporation realized substantial proceeds from the operation of its interest in Section 36. The sum of $185,438.83 has been restored to consolidated taxable net income in the deficiency letter, Exhibit A.

(31) The total depletion allowed by the Commissioner of Internal Revenue in the deficiency letter, Exhibit A hereto attached, and including depletion with respect to Section 36, is $1,674,677.92. Of said total depletion allowed, the Commissioner allowed $45,927.12 of depletion referable to said State School land (Section 36).

(32) The gross income from the properties of the Wyoming Associated Oil Corporation listed in Exhibit N–1 for the year 1925 and the net income of the Wyoming Associated Oil Corporation from said properties was as set forth in this Exhibit. Said Exhibit

36 N-1 shows also (a) 27½% of the gross income from said properties during the taxable year; (b) 50% of the net income of the taxpayers from said properties for the taxable year computed without allowance for depletion; and (c) percentage depletion (without reference to costs or other depletion properly allowable under the statute), consisting of 27½% of said gross income, limited to 50% of said net income. Said gross income is computed in the following manner:

The beginning point in the computation is the total amount received during the year by the Wyoming Associated Oil Corporation, pursuant to the contracts with The Midwest Refining Company dated February 1, 1923, referred to in paragraph (27) hereof. To this sum is added, in respect to each tract, the following: (a) well expense, (b) development expense, and (c) a pro rata share of the overhead expense. Well expense includes all the lifting cost, labor, teaming and freight, supplies and other intangible costs, and materials and labor consumed. Development expense includes the intangible cost of drilling wells, including labor, teaming and trucking and incidental expenses, but does not include any charges for depreciation on equipment or camp buildings. Overhead expense includes field overhead, general administration expense, real estate and personal property taxes, production taxes, miscellaneous state and federal taxes and salaries, prorated to the properties of the Wyoming Associated Oil Corporation. Well expense, development expense and overhead expense for all the properties of the Wyoming Associated Oil Corporation are allocated to the several tracts upon a production basis.

(33) The fair market value at July, 1919, of interests in the located lands, the Stock Oil Company lease, the so-called "Iba 80," and the lease from the State of Wyoming acquired by the Wyoming Associated Oil Corporation at the time of its organization was not less than $32,000,000. The fair market value of the 350,000 shares of stock of the company issued for said properties at the time of issuance therefor was not less than $32,000,000.

(34) The fair market value at March 1, 1913, of the interests in located lands, the Stock Oil Company lease, the so-called "Iba 80" and the lease from the State of Wyoming, acquired by the Wyoming Associated Oil Corporation at the time of its organization, plus
37 subsequent cost thereof, was in the hands of the then predecessor owners not less than $14,393,102.54.

(35) The cost of the adverse or conflicting titles acquired by the Wyoming Associated Oil Corporation at the time of its organization in exchange for 50,000 shares of its capital stock, or 1/7th of the capital stock issued for its properties, was not less than $4,600,000.

(36) Assuming that the organization of the Wyoming Associated Oil Corporation was in part a tax-free exchange or reorganization, the basis for computing gain or loss and depletion in the hands of the transferor of the interests in located lands, the Stock Oil Company lease, the so-called "Iba 80," and the lease from the State of

Vyoming, acquired by the Wyoming Associated Oil Corporation, at he time of its organization, was not less than the following:

(a) Cost in January, 1919, of 35.875% minority interest acquired by Salt Creek Producers Association from The Midwest Refining Company for 372,633 shares of its stock	$9,315,825
(b) Fair market value at Feb. 2, 1914, of 5% majority interest transferred by Verner Z. Reed to trust for Margery B. Reed, 5% majority interest transferred in trust for Verner Z. Reed, Jr., 5% majority interest transferred in trust for J. V. Reed—15%	2,250,000
(c) Fair market value at April 3, 1914, of 5% majority interest given by Verner Z. Reed to Mary Dean Reed	750,000
(d) Fair market value at July 10, 1916, of 9% majority interest transferred by Verner Z. Reed to Trust No. 1, and 9% majority interest transferred by him to Trust No. 2	3,150,000
(e) Fair market value at April 20, 1919, of 26.125% majority interest owned by Verner Z. Reed at date of death	7,200,000
(f) To the foregoing should be added, for the purpose of computing the basis for depletion, the cost alleged in Paragraph 35	4,600,000
Total	$27,265,825

38 (37) The reserves of oil, tract by tract, in said properties listed in Exhibit N as of the dates mentioned are as set forth in Exhibit C–1 and C–2 hereof, made a part hereof for all intents and purposes.

(38) Of the property listed in Exhibit E, attached hereto, the properties not involved in the exchange of February 1, 1923, produced, tract by tract, in the period from March 1, 1913, to and including December 31, 1935, the number of barrels, period by period, re as set forth in Exhibits P–1, P–2 and P–3 attached hereto and nade a part hereof for all intents and purposes.

Of the properties listed in Exhibit N, attached hereto, the properties acquired by the Wyoming Associated Oil Corporation on the exchange of February 1, 1923, had as of February 1, 1923, in the reserves of oil set forth in Exhibit O–2, and produced from February 1, 1923, to December 31, 1925, the number of barrels of oil indicated in Exhibit P–3.

The oil properties surrendered by Wyoming Associated Oil Corporation on the exchange of February 1, 1923, produced, period by period, from March 1, 1913, to December 31, 1923, the number of barrels of oil set forth in Exhibits P–1 and P–2.

PRAYER FOR RELIEF

Wherefore, the Petitioner prays that this Board may hear this proceeding and determine:

(a) That the 27½% limitation on depletion allowable for the taxable year 1925 to the Wyoming Associated Oil Corporation be computed on the basis of gross income as defined herein;

(b) That the depletion of the Wyoming Associated Oil Corporation be computed upon the basis of the cost of its depletable properties to it and/or its transferrors, together with such bases as said properties would have for depletion in the hands of the corporation's transferrors;

(c) That the income of the Wyoming Association Oil Corporation from its state school lease be exempted from tax; and

(d) That this Board give such other and further relief as to it may seem proper and advisable, including the refund of
39 all taxes which it may adjudge to have been overpaid by Petitioner or the Wyoming Associated Oil Corporation in affiliation.

Respectfully submitted.

RANDOLPH E. PAUL,
Attorney for Petitioner.
HAROLD D. ROBERTS,
Attorney for Petitioner.

Duly sworn to by John T. Barnett; jurat omitted in printing.

For Exhibit A referred to herein see Exhibit A attached to original petition, for remaining exhibits see exhibits attached to Statement of Evidence.

Before United States Board of Tax Appeals

Answer to amended petition

Filed Jan. 23, 1934

Comes now the respondent by his attorney, E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed in this proceeding admits and denies as follows:

I. Admits the allegations contained in paragraph I of the amended petition.

II. Admits that a notice of deficiency was mailed to the taxpayer on March 14, 1929. Denies the remaining allegations contained in paragraph II of the amended petition.

III. Denies that the Commissioner of Internal Revenue erred in manner and form as alleged in paragraph III, subparagraphs (A), (B), and (C) of the amended petition.

40 IV. Admits the allegations contained in subparagraphs 1, 2, 3, and 30 of paragraph IV of the amended petition. Denies the allegations contained in subparagraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, and 38 of paragraph IV of the amended petition.

Admits that the petitioner and the Wyoming Associated Oil Corporation filed for the calendar year 1925 a consolidated income tax return on Form 1120, and that the deficiency notice of March 14, 1929, and the statement attached thereto treat said corporations as being affiliated, as alleged in subparagraph 4 of paragraph IV of the amended petition. Denies all the remaining allegations in the said subparagraph.

Admits that the total depletion allowed by the Commissioner of Internal Revenue in the deficiency letter is $1,674,677.92 as alleged in

subparagraph 31 of paragraph IV of the amended petition. Denies all the remaining allegations in the said subparagraph.

Denies generally and specifically each and every allegation contained in the amended petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the amended petition be denied.

(Signed) E. BARRETT PRETTYMAN,
General Counsel,
Bureau of Internal Revenue.

Of Counsel: Nathan Gammon, E. L. Corbin, Special Attorneys, Bureau of Internal Revenue.
NG/bj 1/23/34.

Before United States Board of Tax Appeals

Amendment to answer to amended petition

Filed Jan. 31, 1935

Comes now the Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, Assistant General Counsel, Bureau of Internal Revenue, and for amendment to the answer to amend petition admits and denies as follows:

IV. (30) Denies the allegations contained in the first sentence of subparagraph (30) of paragraph IV of the amended petition; admits the allegations contained in the remaining sentence of said subparagraph.

Wherefore, it is prayed that the amended petition be denied.

ROBERT H. JACKSON,
Assistant General Counsel
for the Bureau of Internal Revenue.

Of counsel: R. F. Hertzog, Conway N. Kitchen, Special Attorneys, Bureau of Internal Revenue.
CNK/acb 1/31/35.

Before United States Board of Tax Appeals

Findings of fact and opinion

Promulgated April 23, 1936

1. In computing depletion of 27½ per cent of "gross income from the property" during the taxable year in the case of oil and gas leases the words "gross income from the property" are held to mean under section 204 (c) (2) of the Revenue Act of 1926, the gross amount actually received by the taxpayer as income from the depletable property—not the market price of the oil or gas produced during the taxable year (unless such was received), nor the amount actually received by the taxpayer, increased by any amount expended by one other than the taxpayer, in producing the oil.

2. Where corporation A received income arising from a Wyoming state oil lease by virtue of a declaration of trust in its favor made by corporation B, the owner of such state lease, held, the income of corporation A from such source is not exempt, but is subject to income tax, such tax not being an imposition or burden upon the lease as an instrumentality of the state.

3. Where the Commissioner, in determining petitioner's income tax liability under the Revenue Act of 1926, computed oil depletion allowance of 27½ per cent of gross income, but did not compute and determine what the depletion allowance would be on cost basis, and the petitioner insists that the latter basis would be greater, and facts necessary to determine which computation would result in the greater depletion are stipulated, held, that petitioner is entitled to have a recomputation made under Rule 50, and be allowed depletion on whichever basis is the greater.

Harold D. Roberts, Esq., Randolph E. Paul, Esq., and Charles McInnis, Esq., for the petitioner.

R. P. Hertzog, Esq., Conway N. Kitchen, Esq., and V. F. Weekley, Esq., for the respondent.

The petitioner, Mountain Producers Corporation, is the parent corporation of the Wyoming Associated Oil Corporation. A consolidated return was filed for the year 1925. Petitioner duly appealed from a deficiency in income tax of $90,642.87 determined against it for that year by the respondent, expressed in a deficiency notice of March 14, 1929.

42 An amended petition was filed in 1933, and in 1935 a hearing was had. Stipulations are filed and adopted as a part of our findings of fact, but are set forth herein in connection with other findings of fact on the evidence, only to the extent found necessary for the understanding and determination of the issues involved.

The errors assigned are, in substance, as follows:

1. The decrease in the amount of depletion deduction of the Wyoming Associated Oil Corporation from $2,215,862.23 to $1,674,677.00, asserted to have been based upon a wrong interpretation and application of section 204(c) (2) of the Revenue Act of 1926, in that the depletion computed in the deficiency notice was based upon 27½ per cent of an incorrectly computed gross income.

2. The increase of the net taxable income of the Wyoming Associated Oil Corporation by the restoration thereto of $185,438.83 so-called income from leased state lands.

3. In computing the net income of the Wyoming Associated Oil Corporation and the net income of it and the petitioner, the failure to allow as a deduction depletion based on cost to the Wyoming Associated Oil Corporation and/or its respective transferors and predecessor owners.

Findings of fact

The Mountain Producers Corporation and the Wyoming Associated Oil Corporation are Delaware corporations, the former organ-

ed on May 12, 1920, and the latter on July 11, 1919, the principal ices of both being at the same address in Denver, Colorado.

Throughout the year 1925 the petitioner owned all the capital stock of the Wyoming Associated Oil Corporation. It is stipulated that in computing the income tax liabilities of these corporations for 1925 the net income of the taxpayer should be computed, as in the deficiency notice of March 14, 1929, on a consolidated basis.

Immediately after its organization the Wyoming Associated Oil Corporation received from various parties deeds, assignments, and conveyances covering certain patented lands and interests in oil and gas leases in the Salt Creek Oil Field in Natrona County, State of Wyoming. With respect to these transactions it is stipulated that no Federal tax liability on the part of the Wyoming Associated Oil Corporation was incurred, or if incurred, it was paid.

On February 25, 1920, an act of Congress, known as the Oil and Gas Leasing Act, went into effect and under its so-called relief provisions, particularly those in sections 18, 18 (a), and 19, the lands acquired by the Wyoming Associated Oil Corporation as heretofore described became eligible for exchange into Government leases. Pursuant to said act, in 1920 and 1921 the Wyoming Associated Oil Corporation received from the United States, in lieu of its former placer mining locations, certain leases covering lands listed by governmental subdivisions, under the caption "United States Government Leases," as stipulated herein.

On February 1, 1923, the Wyoming Associated Oil Corporation and the Midwest Oil Co., an Arizona corporation, executed a trust instrument effective throughout the taxable year 1925, wherein and whereby the Midwest Oil Co., the holder of a certain lease from the State of Wyoming, dated October 1, 1919, covering all of school section 36 in Natrona County, Wyoming, agreed to hold in trust for the benefit of the Wyoming Associated Oil Corporation an undivided 50 percent interest in the lease covering section 36, and in the benefits and net proceeds to be realized therefrom and from all renewals and extensions thereof. The trust agreement was to be effective as of February 1, 1923, and to completely supersede and replace all other declarations of interest in favor of the Wyoming Associated Oil Corporation.

On sundry dates between June 1, 1919, and December 31, 1924, the Wyoming Associated Oil Corporation disposed of, by sale or exchange, certain of its properties and interests. As a result of these transactions the Wyoming Associated Oil Corporation on January 1, 1925, owned and held—omitting any reference to section 36—oil lands and interests subject to depletion and from which oil was produced. The number of barrels of oil produced during the year 1925 from the numerous tracts of land and interests covered by the various lease agreements, exclusive of the state school lease (section 36, separately considered) is set forth in detail in stipulation filed and adopted by reference as a part of our findings of fact. Like-

wise, so stipulated and adopted, are the gross income from
44 each property, its field operating expense, income received a
contract price, general and overhead expense, net income o
taxpayer, 27½ per cent of gross income, 50 per cent of net income
and allowable depletion.

During the same period between June 1, 1919, and December 31, 1924, the Wyoming Associated Oil Corporation expended sundry sums of money for the acquisition of adverse titles or outstanding interests in land so held by it, which sums constituted additional capital investment by it in said lands. The amounts have been distributed by the Wyoming Associated Oil Corporation over the several tracts benefited thereby in the amounts and years tabulated and also stipulated.

About February 1, 1923, the Wyoming Associated Oil Corporation, the Midwest Oil Co., and the Wyoming Oil Fields Co. entered into an agreement with the Midwest Refining Co. in which the first three named parties are called "Producing Companies" and the Midwest Refining Co. is called "Refining Company." The producing companies owned certain leases covering lands in the Salt Creek Oil Field, Natrona County, Wyoming, as follows: The Midwest Oil Co. and the Wyoming Associated Oil Corporation each owned an undivided 50 per cent interest in the so-called "Schoonmaker Lease." The Wyoming Associated Oil Corporation and the Wyoming Oil Fields Co. each owned an undivided 50 per cent interest in the so-called "Iba Lease." The Midwest Oil Co. and the Wyoming Associated Oil Corporation each owned an undivided 50 per cent interest in the so-called "Stock Lease." The Midwest Oil Co., for the benefit of itself and the Wyoming Associated Oil Corporation, owned an undivided 50 per cent interest for each in the so-called "State School Lease" covering the aforesaid school section 36.

It was agreed that from February 1, 1923, until January 1, 1934, the producing companies would, subject to certain conditions (not necessary to be here set out), sell, exclusively, unto the refining company all the oil produced from said lands (except oil used for drilling, etc.) upon a sliding scale of prices fully stipulated, but not here necessary to be set out.

From the date of the agreement until January 1, 1934, the producing companies were to give the refining company free use of all storage facilities, pipe lines, buildings, and equipment owned by the
producing companies or either of them, upon said lands also
45 give, free of charge, oil and gas reasonably necessary for drilling, for domestic service, and for production thereon.

The refining company agreed to purchase from the producing companies currently as produced all of the oil of the several producing companies (except oil for drilling, etc.) at the prices indicated in the contract. The contract provided in part:

From the date of this Agreement, until the First day of January 1934, as part of the price for oil purchased hereunder, the Refining

Company will drill, case, and maintain all wells, find and supply water, install and operate pumps. When necessary, clean, shoot, and otherwise stimulate production of wells as necessary, and conduct all development and production operations upon said lands necessary or proper for the protection and conservation of the oil and gas contained therein and for the production of oil therefrom in such amounts and from such wells as will prevent the drainage of the oil content of said lands through wells belonging to other operators, and will, at all times, during said term, maintain the development of and production from said lands at such rate that the production of oil therefrom shall be proportionate to the production of oil in other parts of the Salt Creek Field. * * *

It was further provided in the contract that the "Refining Company will take delivery of the oil purchased hereunder at the outlet gates of the measuring tanks located at or near the wells on said lands."

The contract also provided that:

Section Thirty-six (36) is subject to royalties in favor of the State of Wyoming, and that the other tracts of land are severally subject to various royalties in favor of others, and it is agreed that whenever the State of Wyoming, or any other royalty owner having the right to take his royalty in kind shall elect to exercise such right, then the royalty oil, with respect to which such right is exercised, shall not be subject to this purchase agreement but shall be delivered by the Refining Company to such royalty owner in accordance with such directions as the royalty owner may rightfully give therefor, but the Refining Company shall have the right, if it and royalty owner can reach an agreement, to purchase any such royalty
46 oil from the owner thereof on any terms mutually agreeable to them.

Royalty paid the State of Wyoming was in barrels of oil in kind and such practice prevailed from 1924 to 1934. Royalties taken in kind were divided at the pipe line and payment was made to the three producing companies for their share of the oil after the oils in kind were taken.

When the oil came from the wells it went into the battery tanks, was steamed, impurities taken out, and the clean oil run from the battery tanks to the pipe line; and that part that was delivered to the state was delivered at the battery tanks.

The proceeds of the sale of oil not delivered to the state were divided 50-50 between the Wyoming Associated Oil Corporation and the Midwest Oil Co. in the year 1925.

Before the oil left the battery tanks and went into the gathering lines, a representative of the Wyoming Associated Oil Corporation checked the gauging, supervised the run, and signed the run checks that were forwarded to its Denver office.

The properties—section 36 as well as the others—were operated by the Wyoming Associated Oil Company through the agency of the Midwest Refining Co., the latter conducting the actual operations.

The contract also provided: "The Producing Companies may, at all times, maintain gaugers and inspectors upon their said lands, and shall be furnished by the Refining Company with monthly statements," giving full information as to oil produced from said lands as to certain sales, gross price, etc.

Also, on February 1, 1923, the Wyoming Associated Oil Corporation and the Midwest Refining Co. entered into a contract, the former being referred to therein as "Producing Company" and the latter as "Refining Company." This contract in its terms was identical or in substance the same as the contract last described, with reference to its effective date, duration, sale of oil exclusively to the refining company, upon a sliding scale, etc., stipulated, as are the lands therein involved.

On or about April 19, 1923, the State of Wyoming, through
47 its State Board of Land Commissioners, leased to the Midwest Oil Co. all of the aforesaid section 36, in Natrona County, Wyoming, for the purpose of drilling, boring, operating for, and producing mineral oil and gas for a term of five years beginning on October 1, 1924. The lease agreement is lengthy and its many provisions and conditions need not be here set out. As a consideration for the lease a certain royalty was to be paid by making "delivery of the royalties in kind * * * to the Mutual Oil Company as the representative" of the state. No assignment of the lease was permitted without the consent of the state. The lease was executed by the president of the State Board of Land Commissioners and the Midwest Oil Co. The lease was to be construed under the provisions of the laws of the State of Wyoming. It supplanted a somewhat similar lease which bore date of October 1, 1919. It was agreed in the latter lease that its execution constituted a surrender of a lease of the same section, dated December 31, 1914, though December 26, 1914, was evidently intended. The lease of December 26, 1914, was of the same section, between the same parties and for the period of five years from January 1, 1915. This lease provided that as a consideration for the granting of the lease the Midwest Oil Co. agreed to surrender to the State of Wyoming its lease to the same land dated January 4, 1910, issued to William M. Fitzhugh and assigned by him to the Midwest Oil Co., and it was expressly "stipulated and agreed by the parties hereto that said lease and all the rights of the party of the second part thereunder shall cease and terminate at midnight of the night of December 31, 1914."

The lease of January 4, 1910, by the State of Wyoming to William M. Fitzhugh above referred to was for a period of five years from that date, money royalties to be paid in advance, annually, on January 4th of each year.

It is stipulated that if the Board should find that the amount of $185,438.83 added to taxable income in the deficiency notice is exempt from taxation, then the deductions allowed in the deficiency notice should be reduced in the amount of $45,927.12 representing the deple-

tion applicable to this income, and in the amounts of $5,602.81 and $18,431.11 representing taxes and royalties which were allowed as deductions in the deficiency notice.

48 The average field price of oil or market price of oil in the Salt Creek Field, Wyoming, during the year 1925 was $1.808605 per barrel.

The consolidated return filed by the Mountain Producers Corporation and the Wyoming Associated Oil Corporation for the year 1925 was on an accrual basis and did not include as income any amount expended by the Midwest Refining Co. under contracts made by it with the Wyoming Associated Oil Corporation, the Midwest Oil Co., and the Wyoming Oil Fields Co., and none of said amounts were entered as income on the books of the Wyoming Associated Oil Corporation or the Mountain Producers Corporation. Said return included in gross income the net prices actually received pursuant to said contracts. The return computed depletion, in so far as depletion consisted of 27½ per cent of the gross income from the property, by taking 27½ per cent of an amount consisting of the barrels of oil produced from the properties of the company at the market price of oil in the field at the date of production.

The fair market value at February 2, 1914, April 3, 1914, and April 10, 1916 (so recited in stipulation, though July 10, 1916, probably intended), of the interests transferred in trust on those dates to predecessor owners of the Wyoming Associated Oil Corporation as set forth in the stipulation is agreed to be, for the purposes of this proceeding, the fair market value at March 1, 1913, of the same interests in said properties, and the total value of the interests transferred as stated on above dates, it is agreed, aggregates 38 per cent of the fair market value of March 1, 1913. It is further agreed that a true copy of the deficiency notice is attached to the amended petition herein.

For the year 1925 the petitioner paid a total income tax of $271,342.32 at the dates and in the amounts set forth in the following schedule:

Mar. 15, 1926	$73,050.35
July 1, 1926	57,402.69
Aug. 19, 1926	5,218.12
Sept. 11, 1926	67,835.58
Dec. 14, 1926	67,835.58
	271,342.32

49 The income tax return of petitioner herein was filed in the office of the collector of internal revenue for the district of Colorado at Denver, Colorado.

The unrecovered capital sum of the Wyoming Associated Oil Corporation as of January 1, 1925, returnable through depletion upon the basis of cost, but without any reference to percentage depletion as provided for in section 204 (c) (2) of the Revenue Act of 1926, of the rights, properties, and interests of the Wyoming Associated

Oil Corporation owned and held as of January 1, 1925, omitting any reference to the aforesaid school section 36, is stipulated and in the aggregate amounts to $11,607,199.93.

The unrecovered capital sum of the Wyoming Associated Oil Corporation as of January 1, 1925, returnable through depletion upon the basis of cost, but without any reference to percentage depletion as provided for in section 204 (c) (2), supra, with respect to the aforesaid school section 36 is $233,817.

Opinion

Seawell: 1. There is no controversy as to the right of the Wyoming Associated Oil Corporation to an allowance for depletion on its interest in the properties in question; nor is there any dispute as to what the allowable depletion is, on the basis of cost, which is stipulated. The main problem for consideration and determination is what is meant by "gross income" for the purpose of computing depletion on the percentage basis. There is no disagreement on the proposition that the taxpayer may avail itself of whichever basis results in the greater depletion.

Under the contracts between the Wyoming Associated Oil Corporation and the Midwest Refining Co., the latter company took delivery of the oil purchased "at the outlet gates of the measuring tanks located at or near the wells."

The average field price of oil or market price of oil in the Salt Creek Field, Wyoming, during the year 1925 was $1.808605 per barrel. In behalf of the Wyoming Associated Oil Corporation (and in behalf of petitioner) it is contended that the "gross income" upon which depletion allowance of 27½ per cent applies should be based on the market value of the oil produced or at least on the amount
50 actually received, plus the operating expenses of the Midwest Refining Co., which in the consolidated return was claimed as $2,215,862.23, now stipulated to be $2,816,520.04.

Section 204 (c) (2) of the Revenue Act of 1926 provides:

In the case of oil and gas wells the allowance for depletion shall be 27½ per centum of the gross income from the property during the taxable year. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

It is specifically stated in the statute that the allowance for depletion shall not exceed 50 per cent of the "net income of the taxpayer (computed without allowance for depletion) from the property." We are of the opinion and hold that, in arriving at the amount of depletion allowable under said section, development expense should not be deducted from the gross income from the property in arriving

it the net income therefrom for the purpose of applying the depletion limitation of 50 per cent of the net income. See Ambassador Petroleum Co. v. Commissioner, — Fed. (2d) — (Feb. 5, 1936); 9110, C. C. H. 1936, vol. 3. In the instant case, in our opinion, it is logical to conclude that the words "gross income" to which the rate of 27½ per cent applies means the gross income of the Wyoming Associated Oil Corporation for the year 1925 from its property subject to depletion. See Everett J. Crews, 33 B. T. A. 36, 49.

It is argued in behalf of the petitioner that in the particular circumstances of the instant case, if the allowance for depletion on a percentage basis is limited to 27½ per cent of the amount actually received by the Wyoming Associated Oil Corporation for the oil produced from the properties subject to depletion, it does not receive as great an allowance as if it were operating the properties itself, since in that event the amount it received from the oil would be greater. Such might be the situation of any owner of oil properties which does not choose to operate its properties itself. It is the insistence of the respondent that the amount received by any holder of an interest in oil properties other than the one actually operating the property is the gross income which is subject to the 27½ per cent depletion deduction, and, regardless of the fact that such amount is net in so far as the costs of producing the oil is concerned, the taxpayer is not permitted in such cases to base the percentage allowance on the amount received plus the cost of operations or on the market price of the oil produced. If the base determined by the respondent for computing percentage depletion is not considered satisfactory, the taxpayer, as we have heretofore indicated, may compute its allowance for depletion on the basis of cost, if that method results in a greater depletion allowance. See section 204 (a) and (b) of the Revenue Act of 1926. Helvering v. Twin Bell Oil Syndicate, 293 U. S. 312.

51

There are numerous cases involving the application of percentage depletion, but we are aware of none in which the peculiar circumstances shown in the instant case were present.

In Helvering v. Twin Bell Oil Syndicate, supra, the question for decision was as to the total allowance for depletion permitted and its apportionment between lessor and lessee where the income is derived from operation under an oil and gas lease. The Supreme Court decided the depletion allowance permitted an assignee or lessee named in an oil and gas lease should be limited to 27½ per cent of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer. The lessor, likewise, was entitled to a depletion allowance of 27½ per cent of the gross income received by it from the oil and gas production. The royalties paid out by the Twin Bell Oil Syndicate were obviously a part of the gross income from the property, but nevertheless as held by the Supreme Court

the royalties so paid could not be considered a part of the gross income to be used for computing the depletion allowable to the taxpayer.

It is insisted in behalf of the petitioner that under the provisions of the agreements with the Midwest Refining Co., whereby the properties were operated, the cost of the operations and development expenses were a part of the purchase price paid the Wyoming Associated Oil Corporation for the oil and should, therefore, be considered as a part of the "gross income from the property." It is not shown that the Wyoming Associated Oil Corporation included in its return for 1925 any such expense as part of its gross income.

52 Such expense as the Midwest Refining Co. incurred in rendering alleged services to the Wyoming Associated Oil Corporation, under circumstances shown, was not, in our opinion and we so hold, income to the latter.

Under the contract between the parties, the petitioner contends that the market value of the oil produced should be taken as the gross income for the purpose of computing percentage depletion, on the theory that the value of the services rendered by the Midwest Refining Co. in operating the leases was a part of the purchase price of the oil and that the value of such services should be assumed or considered to be the difference between the market value of the oil and the contract price.

There is, in our opinion, no sound basis for the assumption that the value of the services rendered by the Midwest Refining Co. in producing the oil should be considered as a part of gross income of the Wyoming Associated Oil Corporation. It is natural and reasonable, however, to assume that the Midwest Refining Co., by purchasing all of the oil which was produced under the leases in question for a number of years and assuming the burden and risks incident to the operation and development thereof during that period, paid less for the oil than if it were buying the oil on the open market after it was produced and without assuming any burden in connection therewith. The value fixed or placed by the parties upon the services rendered would seem to be none other than the actual cost of such services, which is the amount actually expended by the Midwest Refining Co. in producing the oil and not necessarily the difference between the market value and the contract price of the oil. There is no evidence nor reason apparent to us to justify the assumption that such costs as stipulated do not represent the full costs of operation of the properties.

Cases in which taxpayers are permitted to use the field market price for the purpose of computing depletion are those in which the product was not sold until it had been converted into a refined product or transported a considerable distance to the consumer. A portion of the selling price in that event naturally represented an amount received for the conversion or for the transportation which can not be used as the basis for computing depletion. See Brea Canon Oil Co., 29 B. T. A. 1134; affd., 77 Fed. (2d) 67; certiorari denied—

U. S.—(Oct. 14, 1935); Consumers Natural Gas Co., 30 B. T. A.
53 1263; affd., 78 Fed. (2d) 161; certiorari denied—U. S.—(Oct. 28, 1935); Greensboro Gas Co., 30 B. T. A. 1362; affd., 79 Fed. (2d) 701; certiorari denied—U. S.—(Nov. 11, 1935).

In the class of cases cited, supra, it was necessary to allocate amount received, and the market price of the oil was assumed to be the portion of the selling price which was received for the raw product, the balance representing the amount attributable solely to manufacturing and transporting the product.

The market price of the oil in those cases was merely used as a basis of allocation of the total amount received in the absence of a more definite basis for determining the amount of gross income subject to depletion or in cases where the gross income could not be otherwise ascertained.

In the instant case the Wyoming Associated Oil Corporation did not conduct any manufacturing operations or transport the product to individual consumers; in fact, it did not itself operate the property and produce the raw material. There is, therefore, nothing to allocate or segregate in this case.

The respondent allowed percentage depletion on the gross income which the Wyoming Associated Oil Co. is shown to have actually received in 1925 pursuant to the contracts entered into in 1923, and to allow such sum to be arbitrarily increased by the amount of operating expenses of the Midwest Refining Co. or to the market price of the oil in effect during 1925, we hold, would be allowing the Wyoming Associated Oil Corporation depletion on a basis in excess of that authorized by the statute. Any allowance for depletion is a matter of grace and unless Congress has provided for depletion there can be no deduction therefor. Darby-Lynde Co. v. Alexander, 51 Fed. (2d) 56; certiorari denied, 284 U. S. 666. Congress no doubt intended that the allowance for depletion be as uniform as possible, though at times it might appear that there were "unjust and unequal results." Helvering v. Twin Bell Oil Syndicate, supra.

The fact that the Wyoming Associated Oil Corporation, by reason of its failure to operate its oil properties itself, may receive, as heretofore indicated, less depletion than it would have received had
54 it operated them or less than other taxpayers who operated their own similar properties is immaterial. There are many reasons why the depletion allowance to the taxpayer may not be the same where it operates the properties and where it does not. Many different facts and circumstances must be taken into consideration in determining the depletion in different cases and naturally, in consequence, depletion results may vary. While this was well known to Congress, it provided, as one of the methods that a taxpayer might adopt, that depletion may be computed at the rate of 27½ per cent of the gross income, though such income would vary in different cases and under different circumstances, as all taxpayers would not receive the same prices for their product and some might operate their prop-

erties themselves while others might do so through others, as was done in the instant case. In other words, Congress saw proper to base percentage depletion allowance on gross income actually received by the taxpayer from its property or interests therein.

The record shows that the respondent in his computation of the 27½ per cent depletion used as a base the amount of gross income which the Wyoming Associated Oil Corporation actually received from the Midwest Refining Co. during 1925. We are of the opinion and hold that no error was committed in using such base for that computation. We think, for reasons briefly stated herein, that the base for computing percentage depletion should not, in the particular circumstances of this case, be either the market price of the oil produced from the said properties or the amount of money received by the Wyoming Associated Oil Corporation from sale of oil to the Midwest Refining Co. increased by the amount of the cost of services rendered by the Midwest Refining Co. in the matter of the oil production.

2. The second assignment of error is based primarily on the decision of the Supreme Court of the United States in Burnet v. Coronado Oil & Gas Co., 285 U. S. 393. In that case, which followed the court's earlier decision in Gillespie v. Oklahoma, 257 U. S. 501, the Supreme Court held that the income derived by the Coronado Oil & Gas Co. under oil and gas leases executed to it by the state upon portions of the public school lands of the state was exempt from Federal income tax, for the reason that the leases to the said company were instrumentalities of the state for the purpose of "carrying
55 out her duty in respect of public schools. To tax the income of the lessee arising therefrom would amount to an imposition upon the lease itself." In so deciding, the court stated that the doctrine of Gillespie v. Oklahoma, supra, should be applied "strictly and only in circumstances closely analogous to those which it disclosed."

The respondent contends that the circumstances of the instant case are not "closely analogous" to those in Burnet v. Coronado Oil & Gas Co., supra; that the instant case is clearly distinguishable from it and, therefore, not controlled by the principle therein enunciated and applied.

On February 1, 1923, a trust agreement was entered into between the Midwest Oil Co. and the Wyoming Associated Oil Corporation, under which the Midwest Oil Co. was to hold in trust for the Wyoming Associated Oil Corporation one-half the benefits and net proceeds realized by the Midwest Oil Co. from a lease of October 1, 1919, which it held from the State of Wyoming, covering school section 36 embraced in the trust.

The lease agreement of October 1, 1919, was superseded by another lease, dated April 19, 1923, between the same parties.

It was this latter lease that was in force during the taxable year (1925) involved herein. It was executed between the State of Wyo-

ming and the Midwest Oil Co. solely. It contained a provision against assignment to any one without the consent of the State of Wyoming. The record does not disclose any assignment thereof, either with or without such consent.

The income which the Wyoming Associated Oil Corporation received from the aforesaid school section 36, held by the Midwest Oil Co., was by virtue of the declaration of trust of February 1, 1923, made by the Midwest Oil Co. prior to the lease of April 19, 1923, which superseded that of October 1, 1919. There was no lease of said land to the Wyoming Associated Oil Corporation by the State of Wyoming. The Wyoming Associated Oil Corporation had no contractual relationship with the State of Wyoming, which leased said school land section in question to the Midwest Oil Co., solely.

The burden of operating the lease, the payment of royalties, and the responsibility for compliance with the numerous provisions of
56 the lease agreement rested directly upon the Midwest Oil Co., which was solely responsible to the State of Wyoming. The declaration of trust under which the Wyoming Associated Oil Corporation realized its income from this school land, in our opinion, is not an instrumentality of the State of Wyoming through which the state exercised sovereign power of maintaining and operating its public schools. Therefore, the situation, in so far as the Wyoming Associated Oil Corporation is concerned, not only is not "closely analogous" to the situation in Burnet v. Coronado Oil & Gas Co., supra, but is different in the material point which entitled the Coronado Oil & Gas Co. to tax immunity in that case.

The facts and circumstances in the instant case are not in all respects the same as those in Wanless Iron Co., 29 B. T. A. 834; affd., 75 Fed. (2d) 779; certiorari denied, 295 U. S. 765, but, in our opinion, are sufficiently similar in their essential aspects to make applicable and controlling, on the issue now being discussed, the principles therein enunciated and the authorities therein cited. In the Wanless Iron Co. case, supra, the petitioner claimed exemption from tax on income realized by it on certain mineral lands owned by the State of Minnesota and leased to one Wanless, who assigned the leases to the petitioner therein, and, subject to subsequent subleases, the petitioner had since been the owner of the leases. Neither the original lessee and assignor nor the petitioner, the assignee and sublessor, ever extracted or sold ore from the lands. The sublessees were the only ones that produced and sold ore from the lands. The royalty paid the state was by the sublessees. The petitioner there paid no royalty to the state. Its claim of tax exemption in the circumstances of that case was denied by the Board, and the determination of the Board was affirmed by the United States Circuit Court of Appeals, as heretofore stated.

In the Wanless case the original lease provided that the lessee might sublet the same. In the instant case there was no such provision, but, on the contrary, one against assignment without approval of the state, the laws of Wyoming forbidding the assignment of state mineral

leases except upon its written consent. See Wyoming Revised Statutes, 1931, Ann., ch. 91, art. 806.

Under the agreement of February 1, 1923, referred to in our findings of fact, it is the Midwest Refining Co. that contracted to do the
57 actual operations under certain leases (which included the school land heretofore mentioned) in the Salt Creek Oil Field.

As stated by the Court of Claims in Marland v. United States, 3 Fed. Supp. 611, "The immunity from taxation applies only where the tax would be a real and direct burden upon the state's exercise of its governmental functions." See same case, 53 Fed. (2d) 907; certiorari denied, 290 U. S. 658. There is no proof here that the tax asserted would be a "real and direct burden" upon the State of Wyoming. Nothing in the record indicates that the imposition or payment of the tax asserted in this instance would in any way burden or interfere with the state in the exercise of its governmental functions. The execution of the declaration of trust of February 1, 1923, which entitled the Wyoming Associated Oil Corporation to share equally with the Midwest Oil Co. in the benefits and proceeds derived from the lease of section 36, was a distinct transaction and trust between private owners to which the state was not a party and the income realized as a result thereof is, in our opinion, in the same status as income realized from the sale of a state lease, which was held not to be exempt in the Marland case above cited and in Rice Oil Co. v. United States, 7 Fed. Supp. 414. Se' also Willcutts v. Bunn, 282 U. S. 216, in which an exemption was denied to income realized from the sale of municipal bonds the interest on which is exempt from tax. Eckstein v. United States, 10 Fed. Supp. 231 (Ct. Cls.); Hobart Iron Co., 29 B. T. A. 855; and Bankline Oil Co., 33 B. T. A. 910. Cf. Metropolitan Building Co. v. United States, 12 Fed. Supp. 537.

The income which the Wyoming Associated Oil Corporation received from the said school land section 36 was by virtue of the declaration of trust in its favor by the Midwest Oil Co. Such did not create any privity of contract or constitute any contractual relationship whatever with the State of Wyoming.

It is insisted by petitioner's counsel that the exclusion from consideration herein of oral evidence tendered for the purpose of showing that the State of Wyoming recognized the Wyoming Associated Oil Corporation as its direct lessee of said school section is error. The evidence offered was received in order that the record might show what it was, but it was with the understanding that it would be stricken as inadmissible upon respondent's objection then
58 made, petitioner's counsel being granted an exception to such action so taken. We think and hold that in so ruling no error was committed. The lease of the school section of land by the State of Wyoming was made in writing to the Midwest Oil Co. and only to it. The oral testimony offered and excluded from consideration in the determination of the issue involved would (if admitted and con-

sidered) have violated a well recognized rule of evidence. "Parol testimony can not be received to contradict, vary, add to or subtract from the terms of a valid written instrument." Jones on Evidence (Civil Cases, 3d Ed.), sec. 434, p. 656. See also Garden City Feeder Co. v. Commissioner, 75 Fed. (2d) 804; Pugh v. Commissioner, 49 Fed. (2d) 76, in effect affirming 17 B. T. A. 429; certiorari denied, 284 U. S. 642.

After carefully considering the evidence, arguments, and authorities relative to this issue, though all have not been discussed herein, we are of the opinion and hold that the respondent did not err in his determination that the $185,438.83 added to taxable income in the deficiency notice is not exempt, but is subject to income tax.

3. The third assignment of error relates to depletion and the costs basis to be used in computing depletion in lieu of percentage depletion in the event that depletion based on cost should be greater than such percentage depletion. The stipulations enumerate the numerous tracts involved, including the aforesaid section 36, and state as to each the unrecovered capital sum returnable on January 1, 1925, through depletion upon the basis of cost.

The petitioner contends that it is entitled to a greater amount of depletion than was allowed under the percentage computations as computed and allowed by the respondent. We have herein determined the principles to be applied in determining the 27½ per cent depletion based upon gross income and also those applying to depletion based on cost.

Under the facts as stipulated and established by evidence, we are of opinion and hold that the petitioner is entitled to a recomputation under Rule 50 and to have allowed as depletion whichever amount is the greater—depletion based upon cost, or percentage depletion based upon gross income computed as we have indicated.

Decision will be entered under Rule 50.

59 Before United States Board of Tax Appeals

Decision

Pursuant to the findings of fact and opinion promulgated in the above-entitled proceeding on April 23, 1936, counsel for the respondent having filed a proposed final determination with notice of settlement, due notice of hearing under Rule 50 having been served on counsel for the parties; and at the hearing held on June 24, 1936, counsel for the petitioner having failed to contest the proposed final determination of the respondent, now, therefore, it is

Ordered and Decided that there is a deficiency in income tax for the year 1925 in the amount of $67,509.13.

[SEAL] (Signed) STEPHEN J. MCMAHON,
Member.

Entered June 25, 1936.

In United States Circuit Court of Appeals

Petition for review of decision of the United States Board of Tax Appeals and assignments of error

Filed Sept. 14, 1936

To the Honorable Judges of the United States Circuit Court of Appeals for the Tenth Circuit:

The above-named petitioner hereby petitions for a review of the decision of the United States Board of Tax Appeals promulgated in the above-entitled case April 23, 1936, a final decision having been entered June 25, 1936, and respectfully shows to this Honorable Court as follows:

I. DESIGNATION OF COURT OF REVIEW

The petitioner on review (hereinafter referred to as the "petitioner") is a corporation organized on May 12, 1920, under the laws of the State of Delaware, with its principal office at Denver, Colorado.

During the calendar year 1925 and at all other times material to this case the petitioner owned all of the capital stock of the Wyoming Associated Oil Corporation (hereinafter referred to as the "Operating Company"), a corporation organized on July 11, 1919, under the laws of the State of Delaware, with its principal office at Denver, Colorado. During and throughout the year 1925, the petitioner and the Wyoming Associated Oil Corporation were affiliated in a "Class A" relationship within the purview of Section 240
60 of the Revenue Act of 1926, and filed for the year 1925 a consolidated income tax return on Form 1120 under the name of Mountain Producers Corporation as the parent corporation. The said return was filed with the Collector of Internal Revenue at Denver, Colorado, whose office is located within the jurisdiction of the United States Circuit Court of Appeals for the Tenth Circuit.

The respondent on review (hereinafter referred to as the "Commissioner") is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

The petitioner, being aggrieved by the said decision of the United States Board of Tax Appeals rendered in the above-entitled case, desires a review thereof by the United States Circuit Court of Appeals for the Tenth Circuit, in accordance with the provisions of Sections 1001 to 1003, inclusive, of the Revenue Act of 1926, as amended by Section 519 of the Revenue Act of 1934.

II. STATEMENT OF THE NATURE OF THE CONTROVERSY

During and throughout the year 1925 the Wyoming Associated Oil Corporation (referred to herein as the "Operating Company")

owned and operated a number of leases controlling the production of oil from the Salt Creek Field in Natrona County, State of Wyoming. A majority of the leases had been acquired from the federal government under the so-called Leasing Act of February 25, 1920, by the surrender of its former placer mining claims. A few of the leases had been obtained from fee owners of patented lands, and an undivided one-half interest in one lease covering Section 36 (hereinafter referred to as the "State School Lease") had been obtained from the State of Wyoming. The State School Lease and a few of the other leases were owned jointly with the Midwest Oil Company and the Wyoming Oil Fields Company (two other producing companies in the Salt Creek Field).

All of the oil produced by the Wyoming Associated Oil Corporation (the Operating Company) under its leases in the Salt Creek Field, during the year 1925, was sold to the Midwest Refining Company under two contracts dated February 1, 1923. One of the contracts of February 1, 1923, covered the sale of oil produced
61 under the leases owned jointly by the Wyoming Associated Oil Corporation, the Midwest Oil Company, and the Wyoming Oil Fields Company, including the State School Lease. The other contract of February 1, 1923, covered the sale of oil produced under the leases owned entirely by the Wyoming Associated Oil Corporation. Under each of the two contracts of February 1, 1923, which were identical in substance with the exception of the parties thereto, the three companies owning the leases, referred to therein as the "Producing Companies," agreed to sell to the Midwest Refining Company, referred to therein as the "Refining Company" all of the oil produced from the designated leases during the period from February 1, 1923, until January 1, 1934, upon a sliding scale of prices fully stipulated therein, which prices were considerably below the average price being paid for similar oil in the Salt Creek Field.

As part of the purchase price of the oil to be produced from the said leases, the "Refining Company" agreed to "drill, case and maintain all wells, find and supply water, install and operate pumps when necessary, clean, shoot and otherwise stimulate production of wells as necessary, and conduct all development and production operations upon said lands necessary or proper for the protection and conservation of the oil and gas contained therein and for the production of oil therefrom in such amounts and from such wells as will prevent the drainage of the oil content of said lands through wells belonging to other operators." Appropriate provision was made in the contract covering the sale of oil from the jointly-owned leases for the payment to the designated representative of the State of Wyoming of the state's royalty from Section 36 (the State School Lease) of oil in kind.

All of the oil produced from the leases of the Wyoming Associated Oil Corporation during the year 1925, with the exception of the royalty paid to the State of Wyoming in kind from the School Lease,

was sold to the "Refining Company" at the prices designated in the two contracts of February 1, 1923, and the "Refining Company," in addition to paying the prices designated in the contract for the said oil, performed the services which it had agreed to perform in the two contracts. The average field price of oil, or market price of oil, in the Salt Creek Field, Wyoming, during the year 1925, was $1.808605, whereas the average amount received in cash by the
62 Wyoming Associated Oil Corporation for the sale of its oil under the above-mentioned contracts of February 1, 1923, was approximately $1.25 per barrel.

In computing depletion at the rate of 27½% of the gross income from the leases owned by the Wyoming Associated Oil Corporation during the year 1925, under Section 204 (c) (2) of the Revenue Act of 1926, the Commissioner applied the 27½% rate only to the actual cash received from the "Refining Company," and refused to take into consideration, as part of the gross income of the Wyoming Associated Oil Corporation, the value of the services performed for that company by the "Refining Company," as part of the purchase price of the oil under the contracts of February 1, 1923. The taxpayer took the position that the application of the 27½% rate to the average field price of similar oil during the year 1925 would be the most equitable way of allowing for the additional consideration and income received in the form of services, but that in any event the taxpayer was, at the very worst, entitled to have included in the gross income subject to depletion the actual cost of the services performed by the "Refining Company" which was stipulated to be in the amount of $2,816,520.04. The Board of Tax Appeals approved the action of the Commissioner.

During and throughout the year 1925 the Wyoming Associated Oil Corporation owned and operated an undivided one-half interest in a lease dated April 19, 1923, between the State of Wyoming and the Midwest Oil Company, covering the production of oil and gas from Section 36 in the Salt Creek Field (the "State School Lease"). The said lease was held by the Midwest Oil Company under a trust agreement dated February 1, 1923, whereby one-half of the benefits and net proceeds from the said lease was held in trust for the Wyoming Associated Oil Corporation. The State School Lease, dated April 19, 1923, had superseded a prior lease dated October 1, 1919, between the same parties, which had in turn superseded another prior lease dated December 26, 1914, between the same parties. The lease of December 26, 1914, had in turn superseded a prior lease covering the same section dated January 4, 1910, between the State of Wyoming and William M. Fitzhugh. In obtaining the lease of January 4, 1910, William M. Fitzhugh had acted for a mining partnership consisting of himself and eighteen other individuals. The interests of the
63 respective partners were unequal. During the year 1911 William M. Fitzhugh and one other of said partners, acting separately from the other members of said partnership, sold their interests in said lease to The Midwest Oil Company. During the same

year the other seventeen members of said partnership negotiated the sale of their interests in said lease (purchase price paid in 1912) to certain other corporations through which it passed to The Wyoming Associated Oil Corporation. In renewing the lease each time, the Midwest Oil Company acted not only in its own behalf but also as trustee for the owner or owners of that part thereof which was subsequently acquired by the Wyoming Associated Oil Corporation.

The Wyoming Associated Oil Corporation was considered by the Midwest Oil Company, the Midwest Refining Company, the State of Wyoming, and all other persons having contact with the oil produced from Section 36, as owning, throughout the year 1925 and at all times material to this case, an undivided one-half interest in the said lease from the State of Wyoming covering the said section.

The State School Lease and the other jointly-owned leases, together with the leases owned entirely by the Wyoming Associated Oil Corporation, were operated during the year 1925 by the owners thereof, through the agency of the Midwest Refining Company (the company referred to as the "Refining Company" in the contracts of February 1, 1923), the latter conducting the actual operations. The Wyoming Associated Oil Corporation maintained throughout the year 1925 and at all times material to this case, a representative in the field who supervised the operations of the "Refining Company," checked all oil produced from the leases, signed the delivery receipts, and kept his company advised of all drilling and production operations.

When the oil came out of the ground it was delivered to battery tanks where it was steamed and the impurities taken out. It was then delivered to the pipe line for transmission to the "Refining Company," the purchaser under the contracts of February 1, 1923. Payment was made by the "Refining Company" directly to the Wyoming Associated Oil Corporation and the other two "Producing Companies."

The oil produced from the State School Lease was handled in exactly the same manner as the other oil except that the
64 royalty to the State of Wyoming was first paid in kind by delivery of oil to its designated representative. Payment for one-half of the net production from the State School Lease (after the payment of the royalty in kind) was made by the "Refining Company" directly to the Wyoming Associated Oil Corporation as the owner of an undivided one-half interest in the said lease.

The Act of Congress of July 25, 1868 (15 Stat. at Large 178) creating the territory of Wyoming, reserved Sections 16 and 36 in each township for "public schools." Article VII, Sections 1, 2, 4, 6, and 7, and Article VIII, Sections 1 and 2, of the proposed constitution adopted by the people of Wyoming Territory during the years 1889 and 1890, provided that the new state should accept the public land grants for educational purposes, and Article VIII, Section 2, provided that the proceeds of the state lands should "be inviolably appropriated and applied to the specific purposes specified in the original grant or gifts." The United States Congress, with the proposed

Wyoming constitution before it, created the State of Wyoming by an "Act of Admission." Section 4 of the Act of Admission of July 10, 1890 (26 Stat. at Large 222) confirmed the previous territorial grant of sections 16 and 36 to the state for the support of common schools. Section 36 in the Salt Creek Field was received by the State of Wyoming under the above-mentioned Act of Admission, and the proceeds received by the state from the above-mentioned leases covering the said Section have been used by the state exclusively for its public schools. All of the royalty received by the state from the production of oil and gas under the said lease during the year 1925 was used for that purpose.

The Commissioner has included in taxable income of the Wyoming Associated Oil Corporation, for the year 1925, the amount received by it during that year for its one-half of the net production from the State School Lease and the Board of Tax Appeals has approved that action.

At the hearing before the United States Board of Tax Appeals the petitioner offered evidence to show that representatives of the Wyoming Associated Oil Corporation participated in the negotiations with the representatives of the State of Wyoming which culminated in the lease of April 19, 1923, and that the representatives of the State of Wyoming dealt with and communicated with
65 the Wyoming Associated Oil Corporation as the owner of an undivided one-half interest in the said lease, but the testimony was stricken by the presiding member.

The petitioner also offered testimony to show that subsequent to the year 1925 a joint lease was entered into between the State of Wyoming, as lessor, and the Midwest Oil Company and the Wyoming Associated Oil Corporation, as lessees, covering the production of oil from the said section 36, but the said evidence was stricken by the presiding member.

III. Assignment of Error

The petitioner now says that in the record and proceedings before the United States Board of Tax Appeals and in the findings of fact, opinion, and decision promulgated and entered by said Board, manifest error occurred and intervened to the prejudice of the petitioner, and the petitioner says the following errors and each of them, which it avers occurred in said record, proceedings, findings of fact, opinion, and decision, upon which it relies to reverse the said findings of fact, opinion, and decision so rendered and entered by the United States Board of Tax Appeals are as follows:

(1) The United States Board of Tax Appeals erred in not holding and deciding that the allowance for depletion at the rate of 27½% of the gross income from the property of the Wyoming Associated Oil Corporation, under Section 204 (c) (2) of the Revenue Act of 1926, for the calendar year 1925, should be computed at 27½% of the gross field price of a similar grade of oil in the Salt Creek Field during the year in question.

(2) The United States Board of Tax Appeals erred in failing to find, in the alternative, that the 27½% depletion allowable to the Wyoming Associated Oil Company for the year 1925, under Section 204 (c) (2) of the Revenue Act of 1926, should be computed on the amount of cash received by it under the contracts of February 1, 1923, plus the amount expended by the Midwest Refining Company on its behalf in performing the services referred to in the contracts of February 1, 1923.

(3) The United States Board of Tax Appeals erred in determining that the 27½% depletion allowable to the Wyoming Associated Oil Corporation under Section 204 (c) (2) of the Revenue Act of 1926, for the calendar year 1925, should be computed solely on the amount of cash received by the Wyoming Associated Oil Corporation from the Midwest Refining Company under the contracts of February 1, 1923.

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(4) The United States Board of Tax Appeals erred in failing to find that the amounts expended by the Midwest Refining Company on behalf of the Wyoming Associated Oil Corporation in drilling, casing, maintaining, and operating wells on the leases owned by Wyoming Associated Oil Corporation and in performing the other services enumerated in the contracts of February 1, 1923, constituted part of the gross income of the Wyoming Associated Oil Corporation within the meaning of Section 204 (c) (2) of the Revenue Act of 1926.

(5) The United States Board of Tax Appeals erred in holding and deciding that the amount received by the Wyoming Associated Oil Corporation as its one-half of the net proceeds from the operation of the State School Lease covering Section 36 in the Salt Creek Field, constituted taxable income to the Wyoming Associated Oil Corporation.

(6) The United States Board of Tax Appeals erred in failing to find as a fact that the Wyoming Associated Oil Corporation owned and operated one-half of the lease from the State of Wyoming covering section 36 of the Salt Creek oil field.

(7) The United States Board of Tax Appeals erred in excluding evidence proffered by the petitioner showing that the representatives of the Wyoming Associated Oil Corporation participated in the negotiation of the lease covering Section 36 and that the officials of the State of Wyoming having charge of the leasing of said Section have consistently dealt with and recognized the Wyoming Associated Oil Corporation as being the owner of one-half of the said lease.

(8) The United States Board of Tax Appeals erred in excluding evidence proffered by the petitioner showing that representatives of the Wyoming Associated Oil Corporation participated in a conference with representatives of the Midwest Oil Company and representatives of the State of Wyoming in September, 1929, which resulted in another lease to Midwest Oil Company and Wyoming Associated Oil Corporation covering Section 36.

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(9) The United States Board of Tax Appeals erred in excluding evidence proffered by the petitioner showing that the petitioner was

contending before the Commissioner, at the time that the lease dated April 19, 1923, was executed, that income from Section 36 was exempt from federal taxation.

(10) The United States Board of Tax Appeals erred in not rendering judgment for the petitioner for the year 1925 on each of the issues raised in the petition to the said Board for the reason that any other judgment is not supported by competent and substantial evidence nor according to law.

Wherefore, the petitioner petitions that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Tenth Circuit; that a transcript of record and a statement of evidence be prepared in accordance with law and with the rules of said court, and transmitted to the Clerk of the said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

(Signed) HAROLD D. ROBERTS,
First National Bank Building,
Denver, Colorado.

(Signed) RANDOLPH E. PAUL,
40 Wall Street, New York, N. Y.

(Signed) CHARLES B. MCINNIS,
Transportation Building, Washington, D. C.
Attorneys for Petitioner.

[*Duly sworn to by Harold D. Roberts; jurat omitted in printing.*]

68 Sworn to and subscribed before me this 9th day of September 1936. (Signed) Emil W. Anderson, Notary Public. (Seal) My commission expires August 22, 1937.

Before United State Board of Tax Appeals

Notice of filing petition for review

Filed Sept. 14, 1936

To GUY T. HELVERING,
Commissioner of Internal Revenue, Washington, D. C.

Please Take Notice that the undersigned has today lodged with the United States Board of Tax Appeals, on behalf of the petitioner in the above-entitled case, a petition seeking a review of the Board's decision herein by the United States Circuit Court of Appeals for the Tenth Circuit. A copy of the Petition for Review and Assignments of Error as filed, is attached hereto and served upon you.

Dated the 14th day of September, 1936.

CHARLES B. MCINNIS,
Attorney for the Petitioner,
Transportation Building, Washington, D. C.

Receipt of the above and foregoing Notice, together with a copy of the Petition for Review and Assignments of Error mentioned herein, is hereby acknowledged this 14th day of Sept. 1936.

HERMAN OLIPHANT,
Attorney for Respondent on Review.

Before United States Board of Tax Appeals

Statement of evidence

Lodged Dec. 11, 1936. Filed Dec. 12, 1936

The above entitled cause came on for hearing before Honorable Herbert F. Seawell, Member of the United States Board of Tax Appeals at Washington, D. C., on January 31, 1935. The petitioner appeared by its attorneys Randolph E. Paul, Harold D. Roberts, and Charles B. McInnis, and the respondent appeared by his attorneys R. P. Hertzog, Conway N. Kitchen, and V. F. Weekley. Whereupon the following proceedings were had and the following evidence was received.

69 Stipulation of facts containing fifty-two numbered paragraphs and thirty-eight lettered exhibits was received in evidence. Subsequently a supplemental stipulation consisting of one typewritten page and later another second supplemental stipulation consisting of two typewritten pages and two lettered exhibits were received in evidence. That part of the stipulations and exhibits attached thereto bearing upon the issues involved in this cause is as follows:

Stipulation of facts

It is hereby stipulated by and between the above named petitioner and the Commissioner of Internal Revenue by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, that the following facts are true and that the Board may incorporate the same into its findings of fact subject to the right of either party to introduce additional evidence not inconsistent herewith:

1. Mountain Producers Corporation was organized on May 12, 1920, under the laws of the State of Delaware, and was at all times hereinafter mentioned a Delaware corporation with its principal office at 607 First National Bank Building, Denver, Colorado.

2. The Wyoming Associated Oil Corporation was organized on July 11, 1919, under the laws of the State of Delaware, and was at all times hereinafter mentioned a Delaware corporation with its principal office at 607 First National Bank Building, Denver, Colorado.

3. During and throughout the year 1925 the petitioner owned and held all the capital stock of Wyoming Associated Oil Corporation and was throughout said year affiliated in a Class A relationship with the Wyoming Associated Oil Corporation within the purview of Section 240 of the Revenue Act of 1926.

4. The petitioner and the Wyoming Associated Oil Corporation filed, for the year 1925, an affiliated income tax return on form 1120. For the purposes of computing the income tax liabilities of said corporations for the year 1925, the net income of the taxpayer should be computed, as in the deficiency letter of March 14, 1929, on a consolidated basis.

70 5. In the fall of 1909, William M. Fitzhugh, a mining engineer of San Francisco, entered into a mining partnership with a number of other individuals. The active field work of the above partnership was largely done by William M. Fitzhugh. It was financed and otherwise aided by the other members of the partnership. As among themselves the shares in the enterprise of the individual members were: William M. Fitzhugh, 1/8, Mary E. Fitzhugh, 1/8, and the remaining 6/8th distributed among other members of the partnership.

On behalf of this partnership titles and leases covering sundry parcels of land in the Salt Creek Oil Field in Natrona County, Wyoming, of the following classes or types, were acquired:

(a). Placer mining claims located under the Public Land Laws. These locations were recorded in the names of the various members of the partnership, using their names in rotation in groups of 8 names to each claim.

(b). Leases and operating agreements covering certain tracts of patented lands, principally a lease from the Stock Oil Company covering the east half of section 25-40-79 taken in the name of William M. Fitzhugh as lessee, but for the benefit of the partnership.

(c). A state oil and gas lease from the State of Wyoming covering Section 36-40-79 (sometimes referred to hereinafter as the "school" section land or "state school lease") running in the name of William M. Fitzhugh as lessee and held for the benefit of the partnership, which said lease is hereinafter referred to in paragraph 36.

* * * * * * *

6. On or about June 3, 1911, by a contract, a copy of which is attached hereto as Exhibit B, William M. Fitzhugh and Mary E. Fitzhugh transferred to the Midwest Oil Company, a corporation of the State of Arizona, their several undivided fractional interests in all the properties of said mining partnership described in paragraph 5 above.

7. On or about July 24, 1911, by a contract, a copy of which is attached hereto as Exhibit C, William G. Henshaw and the remaining members, other than the Fitzhughs, of said mining partner-
71 ship transferred their undivided interest in all of said properties to the Reed Investment Company, a corporation of the State of Colorado.

8. On or about July 14, 1911, the Midwest Oil Company and the Reed Investment Company, together with William M. Fitzhugh, entered into an agreement of partition, a copy of which is attached hereto marked Exhibit D.

* * * * * * *

10. The Reed Investment Company at this time was a closed

corporation transacting business in an informal manner, its stockholders falling into two groups known as (a) the "Majority Group," consisting of the late Verner Z. Reed, who owned a 64.125% interest therein, and (b) the "Minority Group," consisting of O. H. Shoup, B. H. Hopkins, the late K. C. Schuyler, J. L. Warran, A. M. Johnson, the late C. A. Fisher, and N. L. Wilson. The members of this group among them owned a 35.875% interest.

11. On or about May 10, 1912, when the Reed Investment Company had just completed payments to Henshaw and his associates of the purchase price of the lands referred to in paragraph 7 hereof, the said company and its individual stockholders caused 10 corporations to be organized having the following names, to-wit:

The Control Oil Company,
The Crescent Oil Company,
The Seattle Oil Company,
The Bluestone Oil Company,
The California Oil Company,
The Henshaw Oil Company.
The Fitzhugh Oil Company,
The Pinero Oil Company,
The Barbadoes Oil Company,
The Castle Creek Oil Company.

Thereupon the Reed Investment Company, acting through O. H. Shoup, made to each of said companies (except the Henshaw Oil Company and the Castle Creek Oil Company later herein separately dealt with) a proposal to transfer property to said corporations which in each case was accepted by the company addressed therein.

Immediately thereafter legal title to the property described in
72 each such proposal was conveyed by the Reed Investment Company to the company addressed. These proposals and acceptances are identical in form. * * * Copies of the proposal and acceptance addressed to and executed by the California Oil Company (which include reference to Section 36) are also attached hereto as Exhibit H and I.

12. On or about May 26, 1915, by which time certain transfers of the fraction owned by Verner Z. Reed had occurred, each of said companies (except the Henshaw Oil Company and the Castle Creek Oil Company) executed, pursuant to appropriate corporate action, formal declarations of trust to evidence the title situation resulting from the proposal and acceptance referred to herein. The declaration of trust executed by the Pinero Oil Company, which is in form identical with all the others, is attached hereto as Exhibit J.

13. In the case of the exceptions noted in paragraph 12, the Henshaw Oil Company received from the Reed Investment Company an outright assignment covering certain placer locations on the extreme edge of the field. These were regarded as having only speculative value and were, for the most part, surrendered or lost in subsequent title controversies. No part of the school section and no lands of substantial value in the central parts of the field went to the

Henshaw Oil Company. The Castle Creek Oil Company received only an undivided one-half interest in the lease covering the "Iba 80" referred to above. (Paragraph 9 referring to "Iba 80" omitted because not material to the issues in this cause.)

14. The stock of the Little Reed Companies, including the stock of the Castle Creek Oil Company and the Henshaw Oil Company, was owned by members of the Majority Group and members of the Minority Group in percentages respectively of 64.125% and 35.875%. Individually the stockholders of the 10 Little Reed Companies were the same as the stockholders of the Reed Investment Company and held their stock in the same proportions.

* * * * * * *

16. On or about February 2, 1914, Verner Z. Reed transferred a beneficial interest in a 5% interest in all said properties, being a part of his 64.125% interest therein, to his daughter, Margery V.
73 Reed. This was accomplished by a declaration of trust in which Verner Z. Reed was himself trustee for Margery V. Reed to the extent of this 5%. Subsequently, The Equitable Trust Company of New York succeeded Verner Z. Reed as such trustee, and recognized Margery V. Reed as its direct beneficiary.

17. On or about February 2, 1914, Verner Z. Reed transferred a beneficial interest in a 5% interest in all said properties, being a part of his 64.125% interest therein, to his son, Verner Z. Reed. This was accomplished by a declaration of trust in which Verner Z. Reed was himself trustee for Verner Z. Reed, Jr., to the extent of this 5%. Subsequently, The Equitable Trust Company of New York succeeded Verner Z. Reed as such trustee, and recognized Verner Z. Reed, Jr., as its direct beneficiary.

18. On or about February 2, 1914, Verner Z. Reed transferred a beneficial interest in a 5% interest in all said properties, being a part of his 64.125% interest therein, to his son, Joseph V. Reed. This was accomplished by a declaration of trust in which Verner Z. Reed was himself trustee for Joseph V. Reed to the extent of this 5%. Subsequently, The Equitable Trust Company of New York succeeded Verner Z. Reed as such trustee, and recognized Joseph V. Reed as its direct beneficiary.

19. On or about April 3, 1914, Verner Z. Reed gave absolutely, and pursuant to said gift transferred to his wife, Mary Dean Reed, a 5% interest in all said properties, being a part of the 64.125% interest originally held by said Verner Z. Reed. All of the transfers referred to in paragraphs 16, 17, 18, and 19 hereof, are referred to and recognized in the declarations of trust dated May 26, 1915, one of which is attached hereto as Exhibit J.

20. On July 10, 1916, said Verner Z. Reed disposed of an additional 9% interest in said lands out of the 44.125% remaining to him, transferring this 9% interest to The Equitable Trust Company of New York under a certain Trust No. 1 in favor of sundry beneficiaries.

21. On July 10, 1916, said Verner Z. Reed disposed of an additional 9% interest in said lands out of the 44.125% remaining to him, transferring this 9% interest to The Equitable Trust Company of New York under a certain Trust No. 2 in favor of sundry beneficiaries.

74 22. The said Verner Z. Reed died on April 20, 1919, at which date he still owned 26.125% in said lands and leases, being that part of said original 64.125% interest still retained by him after the transfers described in paragraphs 16, 17, 18, 19, 20, and 21 hereof. A copy of the will of said Verner Z. Reed, which was duly admitted to probate, is attached hereto as Exhibit K.

* * * * * * * *

24. On or about October 3, 1917, the members of the Minority Group transferred and assigned their several interests in said lands and leases, aggregating 35.875% thereof, to the Midwest Refining Company, a corporation of the State of Maine, and in exchange therefor received in the aggregate 11,402 shares of the capital stock of the Midwest Refining Company, this stock being apportioned among the several members of the Minority Group in the proportion of their respective fractions thereof.

25. In January 1919 the Midwest Refining Company transferred it' said 35.875% interest in said properties to Salt Creek Producers Association, Inc., a Virginia corporation. At this same time the Midwest Refining Company also transferred to Salt Creek Producers Association, Inc., certain so-called adverse or conflicting titles derived from Frank Curtis, B. D. Townsend and Fred Lobell and others, affecting or conflicting with titles of many tracts of land in the Salt Creek Field, including the lands and leases then held by the 10 Little Reed Companies named in paragraph 11 hereof and the several beneficiaries for whom said companies acted as trustees. The Salt Creek Producers Association, Inc., in exchange for all of these properties and interests, and in exchange for certain outstanding notes theretofore executed by the Midwest Oil Company payable to the Midwest Refining Company in the principal amount of $1,630,000, issued 305,360 shares of its stock to the Midwest Refining Company.

* * * * * * * *

27. The Wyoming Associated Oil Corporation was organized under the laws of the State of Delaware on July 11th, 1919, an extract from the minutes of a special meeting of the Board of Directors of the Wyoming Associated Oil Corporation held July 18, 1919, being attached hereto as Exhibit L-1. Immediately after the organiza-

75 **tion of the Wyoming Associated Oil Corporation, the corporation received deeds, assignments and conveyances executed by:**

(a) The members of the Majority Group, being the Executor of the Estate of Verner Z. Reed, deceased, Mary Dean Reed, and The Equitable Trust Company of New York, acting at the request and with the concurrence of its several beneficiaries, to-wit: Margery

V. Reed, Verner Z. Reed, Jr., Joseph V. Reed, the beneficiaries of Trust No. 1, and the beneficiaries of Trust No. 2;

(b) The Minority Group, being now Salt Creek Producers Association, Inc., as successor in interest of the original individual members;

(c) The 10 Little Reed Companies named in paragraph 11 hereof as holders of legal title and as trustees for the members of the Majority and Minority Groups; and

(d) Salt Creek Producers Association, Inc., as owner of sundry adverse and conflicting claims to title referred to in paragraph 25 hereof.

* * * (Pertinent portions of said deeds, assignments, and conveyances are attached hereto as Exhibit L–2.)

28. At the time of or immediately after its organization, the Wyoming Associated Oil Corporation issued its total authorized capital stock consisting of 350,000 shares having no par value. Of said 250,000 shares, 50,000 shares were issued for the conflicting or adverse titles derived through Salt Creek Producers Association, Inc., as stated in paragraph 25. The balance, or remaining 300,000 shares, were issued to the owners of the members of the majority and minority groups in proportion to their respective interests in the Little Reed Companies as hereinabove set forth. The transaction involving the issuance of the 300,000 shares of stock of the Wyoming Associated Oil Corporation to the stockholders of the 10 Little Reed Companies was treated by the Commissioner of Internal Revenue as a non-taxable reorganization within the meaning of Section 202 of the Revenue Act of 1918 and has been treated as such by the 10 Little Reed Companies and all of their stockholders.

29. The issuance of the 50,000 shares of stock by the Wyoming Associated Oil Corporation to Salt Creek Producers Associa-
76 tion, Inc., for adverse or conflicting titles, has been recognized by the Commissioner of Internal Revenue as a taxable transaction, and Salt Creek Producers Association, Inc., has paid income and profits taxes on and with respect thereto.

30. On February 25, 1920, an act of Congress, known as the Oil and Gas Leasing Act, went into effect. Under its so-called relief provisions, particularly those set forth in Sections 18, 18 (a) and 19 of said Act, the located lands acquired by the Wyoming Associated Oil Corporation in the manner outlined above, became eligible for exchange into government leases, and, pursuant to said Act, in the years 1920 and 1921, the Wyoming Associated Oil Corporation received from the United States, in lieu of its former placer mining locations, leases covering the lands listed by governmental subdivisions under the caption "United States Government Leases" in Exhibit O–1. * * * (Exhibit O–1 omitted because not material to the issues in this cause.)

31. On or about February 1, 1923, the Wyoming Associated Oil Corporation exchanged certain of the lands and leases then owned and held by it for certain other lands and leases then held by the

Midwest Oil Company and by the Wyoming Oil Fields Company in the Salt Creek Field. This exchange resulted in consolidating the leaseholds of each of the companies party thereto into more compact blocks with a decrease of the necessity for offset drilling.

32. On the same date, February 1, 1923, the Wyoming Associated Oil Corporation and the Midwest Oil Company executed an instrument dated February 1, 1923, a copy of which is attached hereto as Exhibit N, which said instrument continued in force and effect throughout the taxable year 1925.

* * * * * * *

35. On or about February 1, 1923, the Wyoming Associated Oil Corporation, the Midwest Oil Company, and the Wyoming Oil Fields Company entered into a contract with the Midwest Refining Company, a true copy of said contract being attached hereto as Exhibit T–1. On the same date, February 1, 1923, the Wyoming Associated Oil Corporation and the Midwest Refining Company entered into a contract, a true copy of said contract being attached hereto as Exhibit T–2.

77 36. On or about April 19, 1923, the State of Wyoming entered into a lease agreement, a true copy of which is attached hereto as Exhibit U–1, which lease agreement was a renewal of a previous agreement dated October 1, 1919, a true copy of which is attached hereto as Exhibit U–2. The said agreement dated October 1, 1919, was a renewal of a previous agreement dated December 26, 1914, a true copy of which is attached hereto as Exhibit U–3, which said agreement dated December 26, 1914, was a renewal of a previous agreement dated January 4, 1910, a true copy of which is attached hereto as Exhibit U–4.

37. If the Board should find that the amount of $185,438.83 added in Item (d) to taxable income in the deficiency notice is exempt from taxation, then the deductions allowed in the deficiency letter should be reduced in the amount of $45,927.12 reperesenting the depletion applicable to this income, and in the amount of $5,602.81 and $18,431.11, representing taxes and royalties which were allowed as deductions in the deficiency notice.

38. Attached hereto as Exhibit V is a statement showing for the year 1925 the following:

(a) The production in barrels from the properties listed therein.

(b) The income received by the Wyoming Associated Oil Corporation allocated by tracts, at the price stated in the contracts referred to in paragraph 35 of this stipulation.

(c) The general and overhead expense of the Wyoming Associated Oil Corporation allocated to the tracts included in the said list.

(d) The net income of the Wyoming Associated Oil Corporation allocated to the same tracts.

(e) The field operating expense of the Midwest Refining Company under the contracts referred to in paragraph 35 of this stipulation, allocated to the same tracts.

The average field price of oil or market price of oil in the Salt Creek Field, Wyoming, during the year 1925, was $1.808605 per barrel.

39. The consolidated return filed by the Mountain Producers
78 Corporation and the Wyoming Associated Oil Corporation for the year 1925, which was on the accrual basis, did not include in Items 1 to 10 thereof as income any amount which was expended by the Midwest Refining Company in accordance with the contracts referred to in paragraph 35. None of such amounts were entered as income on the books of the Wyoming Associated Oil Corporation or the Mountain Producers Corporation. Said return included in gross income (Item 4a) the net prices actually received pursuant to said contracts. The said return computed depletion, in so far as depletion consisted of 27½% of the gross income from the property, by taking 27½% of an amount consisting of the barrels of oil produced from the properties of the company at the market price of oil in the field at the date of production.

* * * * * * *

52. Any statements contained in the text of this stipulation concerning the nature of the interest of the Wyoming Associated Oil Corporation and its predecessors from time to time in the State School Section, 36-30-79, and the production therefrom and income relating thereto, shall be taken as convenient words of description only, and not as fixing or defining the classification or nature of such interest at any point, or during any period of time. For all purposes of classification and definition of such interest, the pertinent documents themselves and the primary facts as established by all the evidence, including this stipulation, shall govern.

Thereupon, Henry C. Wadlington, having been first duly sworn as a witness on behalf of the petitioner, testified as follows:

DIRECT EXAMINATION

I am General Auditor of the Wyoming Associated Oil Corporation and also hold the same position with the Midwest Oil Company. I have been continuously in the employ of both corporations since February 1, 1923. I am familiar with the oil and gas lease from the State of Wyoming to the Midwest Oil Company, dates April 19, 1923, attached as Exhibit U-1 to the Stipulation of Facts, and I am also familiar with the operations under that lease. Throughout the year 1925 and at all times during the period from 1924 until 1934 the royalties payable to the State of Wyoming under the said lease were paid to the State of Wyoming by oil in kind.

79 I am familiar with the method of settlement between the Midwest Oil Company, the Wyoming Oil Fields Company, and the Wyoming Associated Oil Corporation, referred to as the "producing companies" and the Midwest Refining Company, referred to as the "refining company" under Article III of the Agreement between the above-mentioned parties, dated February 1, 1923, and

included as Exhibit T–1 in the Stipulation of Facts. Settlement was made by the Midwest Refining Company with each of the producing companies in separate remittance papers detailing the proceeds from the sale of oil produced from each tract. Royalties payable in kind were divided at the pipeline and payment was made to the three producing companies for their share of the oil after the royalties in kind had been paid. With respect to royalties payable in cash, the refining company would deliver to the respective producing company the total amount of cash payable for the oil produced from its properties and the particular producing company would, in turn, pay its own cash royalties. The same practice prevailed with respect to the operations under the contract attached to the Stipulation of Facts as Exhibit T–2, and the lands covered thereby.

With respect to the operation of Section 36, the oil produced from that section by the refining company was first collected into battery tanks where it was steamed and the impurities taken out. The Wyoming Associated Oil Corporation has a man employed at the battery tanks to gauge the oil as it is delivered to the gathering lines of the pipeline company. From the battery tanks, the State of Wyoming's share of the oil is delivered to its representative and the balance of the oil is divided equally between the Wyoming Associated Oil Corporation and the Midwest Oil Company. The representative of the Wyoming Associated Oil Corporation checks the gauging of the oil, supervises the run from the battery tanks into the large collecting tank for the entire field, signs the run checks for the Wyoming Associated Oil Corporation's share and forwards them to the home office of the corporation at Denver.

CROSS EXAMINATION

The Midwest Refining Company actually carries on the operations of the properties of the Wyoming Associated Oil Corporation as agent for the latter company, including Section 36
80 as well as the other leases. The Wyoming Associated Oil Corporation has a representative on the field at all times looking after its interest with particular reference to possible economies in operation. He reports to the Denver office of the Wyoming Associated Oil Corporation all matters concerning the operations of the Company, which, in his opinion, affect the interest of the latter corporation. The officials of the latter corporation take up with officials of the Midwest Refining Company from time to time various matters affecting the operations in the field. (Witness excused.)

Thereupon, Harold D. Roberts having been first duly sworn as a witness on behalf of the petitioner, testified as follows:

DIRECT EXAMINATION

I am an attorney of the State of Colorado, having been admitted to the bar of that State either in 1916 or 1917, and I am at present a

member of the law firm of Dines, Dines and Holme, which firm is General Counsel for the Wyoming Associated Oil Corporation. In apportioning our work in the firm among the various members, it fell to my part to give my particular attention to the oil company work, including the work of the Wyoming Associated Oil Corporation. Dating back to about 1917, I became quite active in litigation of that Company over titles in the Salt Creek Field and have been continuously familiar with these titles and executive affairs from that date to the present time. At the time of the passage of the Leasing Act, I had charge of converting its placer rights into Government leases and so became very familiar with its title lines in that work.

I am also familiar with the operations in the Salt Creek Field as it is part of my duty to go to the field and see the operations on the ground from time to time. I make at least one trip to the field most years and sometimes three or four trips a year.

I drafted the declaration of trust executed by the Midwest Oil Company February 1, 1923, and attached as Exhibit N to the Stipulation of Facts. This instrument was drawn at the time that the Wyoming Associated Oil Corporation's interest in the State lease on Section 36 changed from a segregated or from a complete interest in a segregated 400 acres of the Section to an un-
81 divided 50% interest in the lease on that section. The purpose of this instrument was to show the undivided 50% interest that obtained from that date forward. The preceding definition of interest in favor of the Wyoming Associated Oil Corporation, referred to in the declaration of trust, is set forth in an agreement dated July 14, 1911, between William M. Fitzhugh, the Midwest Oil Company, and the Reed Investment Company attached to the Stipulation of Facts as Exhibit D. That instrument, executed in advance of the acquisition by the Reed Investment Company of the Henshaw interests in the State School lease, fixed the lines of a partition to become effective upon the acquisition of the Henshaw interests by the Reed Investment Company, and fixed that interest as a segregated 400 acres of land in that section. The purchase contemplated by Exhibit D of the Stipulation of Facts took place with the result that that instrument served to define the interests in that section of the Wyoming Associated Oil Corporation, because it defined the interest in that section of its predecessor in title or interest.

The declaration of trust (Exhibit N of the Stipulation of Facts) was drawn on February 1, 1923, when that segregated interest changed to an undivided interest. So far as I know, there were no executed formal documents dealing with Wyoming Associated Oil Corporation's interest in that section, between the dates July 14, 1911, and February 1, 1923, although the fact of that segregation of 400 acres to the Wyoming Associated Oil Corporation or its predecessors is incidentally referred to in title lists in a great many

documents. I was personally acquainted with William G. Henshaw and am familiar with his signature. I recognize his signature on that document (document handed witness for identification) which he has signed personally and as attorney in fact. This document came from the title files of the Wyoming Associated Oil Corporation, and I have been familiar with it in the title files of the so-called Little Companies which preceded the Wyoming Associated Oil Corporation. This is one of the deeds that carried out the purchase of the Henshaw interests by the Reed Investment Company, which purchase was forecast in the document attached as Exhibit D to the Stipulation of Facts. This document is likewise referred to in Exhibit C attached to the Stipulation of Facts. This deed was placed in escrow until the purchase price referred to in Exhibit C of
82 the Stipulation of Facts was paid and was then delivered. Thereupon, the document was offered and received in evidence and marked Exhibit No. 1.

The witness called attention to a typographical error in the description of Section 36 in the said document. The township referred to in the second paragraph, 7th line from the top of page 2 is "79" instead of "97." The reference to the correct township is established by Exhibit C of the Stipulation of Facts and by numerous other documents.

The right of election given the producing companies in paragraphs A, B and C of Section 1, Article I of the two agreements, dated February 1, 1923, and attached to the Stipulation of Facts as Exhibits T–1 and T–2 respectively, was exercised by the Wyoming Associated Oil Corporation by selecting the sliding scale of prices outlined in paragraph A of the said Section 1 of the two agreements rather than the schedule of prices outlined in paragraph B of Section 1 of the two agreements.

Disputes have arisen between the Wyoming Associated Oil Corporation and the Midwest Refining Company over the interpretation of Section 2, Article III of the two agreements, dated February 1, 1923 (Exhibits T–1 and T–2 of the Stipulation of Facts). One of the disputes arose as a result of a small fire on the leased premises and involved a question of who should bear the loss of oil resulting from the fire. The dispute was settled on the basis of the strict language of the contract. If the loss occurred prior to the passage of the oil through the tail gate on the measuring tank, it would fall on the producing company but if the loss occurred after the oil had passed that point, the loss would fall on the refining company and the producing company would be paid the full price for the oil in question. Another dispute arose between the Wyoming Associated Oil Corporation and the Midwest Refining Company with respect to the deduction of 3% for moisture and basic sludge covered by the same section of the two contracts. Within a year or two after the execution of the contracts, the executives of the Wyoming Associated Oil Corporation made a very strong request for a reduction of the

3% allowance for moisture and basic sludge and succeeded in getting the refining company to make a uniform rule of 2% deduction instead of the 3% deduction named in the contract. The 2% deduction remained in effect until a later date when the Federal Gov-
83 ernment, which is the landlord in the Federal leases in the field, made a demand for full 100% measurement with deduction only for actual impurities. When the Federal Government succeeded in that position, the executives of the Wyoming Associated Oil Corporation insisted upon the application of that rule under the two contracts. That rule was subsequently put into effect in Section 36 at the demand of the State of Wyoming.

The question of the degree of temperature to be used as a standard for the purpose of measuring the oil was likewise the subject of active discussions between the officials of the Wyoming Associated Oil Corporation and officers of the refining company. Eventually it was decided that the temperature should be corrected to 60 degrees fahrenheit as a standard temperature for measuring the oil.

Acting under the authority given it by Section 5, Article III, of the two contracts, the Wyoming Associated Oil Corporation maintained a full time employee in the field for the purpose of checking the performance of the Midwest Refining Company under the said contracts. The duties of the Wyoming Associated Oil Corporation's representative in the field were to measure the oil in the measuring tanks before it was delivered to the pipeline, to countersign all run checks showing the amount of oil delivered to the pipeline, to observe conditions at the wells, to check all drilling in the field and to report any facts which, in his opinion, indicated that the Midwest Refining Company was not living up to the two contracts of February 1, 1923. His duties included the gauging and inspection of the wells on Section 36 along with the wells on the other leases owned by the Wyoming Associated Oil Corporation.

A great many discussions took place between officials of the Wyoming Associated Oil Corporation and the Midwest Refining Company under Section 6, Article III, of the two contracts of February 1, 1923, the arbitration clauses, with respect to proration in the Salt Creek Field. Likewise a number of discussions occurred under those clauses with respect to the substitution of electrical power for gas or oil burning engines for pumping the oil and also with respect to introducing gas into the wells in order to stimulate production.

The lease from the State of Wyoming, dated April 19, 1923,
84 covering Section 36 (Stipulation of Facts, Exhibit U–1) expired on October 1, 1929, and was followed by another lease between the same parties, dated October 22, 1929, which expired December 22, 1934. The latter lease was, in turn, followed by another one covering the same section, dated December 22, 1934. I conducted most of the negotiations leading up to the last mentioned lease and was present at several of the conferences. In the course of these negotiations, the Wyoming Associated Oil Corporation received a formal letter

from the Commissioner of Public Lands of Wyoming advising that the lease would be granted. That is the letter to which I refer (witness indicating letter). It is signed by Mr. Fitzpatrick, whom I know and with whom I have conducted official business with the State of Wyoming for three or four years.

Thereupon, the letter in question was offered in evidence by counsel for the petitioner. Objection was made by counsel for the respondent, which objection was sustained by the Member.

I was present at a conference between representatives of the State of Wyoming and representatives of the Wyoming Associated Oil Corporation relative to the leasing of Section 36 shortly before the lease of April 29, 1923 (Stipulation of Facts, Exhibit U–1, was made. The conference was presided over by Governor Ross of the Wyoming State Land Board. In addition to the Governor Ross, Mrs. Martin, Superintendent of Public Instruction of the State of Wyoming and two or three other members of the Board, whose names I cannot recall, were present. Mr. Barnett, President of the Wyoming Associated Oil Corporation and I were present on behalf of that company and there were other people present. It was in the nature of a public hearing and discussion conducted at Cheyenne, Wyoming, in the early part of April 1923.

Thereupon, counsel for the petitioner propounded the following question which was objected to by counsel for the respondent: "Q. Will you state all that you can remember occurring at that conference?"

After some discussion the Member agreed to let the witness answer the question and then let counsel for respondent move to strike it.

Whereupon, the question was answered as follows:

85 I can only fix the date of the conference from the date of the lease that resulted from it. The lease is dated April 19, 1923. I remember that it was rather cold wintry weather and in the normal course of events would be a month or six weeks before the actual date of the lease that resulted from it. The conference or hearing was brought about by the Land Board of the State of Wyoming, calling for a renewal of the lease on Section 36 some 18 months in advance of the expiration date of the then existing lease. The then existing lease is Exhibit U–2 attached to the Stipulation of Facts. That lease would not have expired until October 1, 1924, but the State Land Board had invited proposals for a renewal of the lease some 18 months in advance of its expiration date.

The Wyoming Associated Oil Corporation, through Mr. Barnett, took part in that hearing and objected to that procedure inasmuch as it would have the effect of forcing the Wyoming Associated Oil Corporation, as well as the Midwest Oil Company, to bid higher royalties than they might have had to meet if the matter had been permitted to wait until a time nearer the expiration date of the lease. Mr. Barnett, as I recall, made something of an argument before the State Land Board. I do not recall whether I made one or not, but I

was there. The net result was that the State Land Board did just what they intended to do in the first place, forced us to put in an application for a lease if we wanted it, and the result was uniformly raising the royalty from 33⅓% to the uniformly higher royalty of 65%. The higher royalty was provided for in the new lease (Stipulation of Facts, Exhibit U–1) which did not take effect until after the end of the then existing lease although it had been negotiated and signed a year and a half in advance of the expiration of the then existing lease.

Thereupon, counsel for the respondent again objected to the question and moved that the answer be stricken for the reason that it is incompetent, irrelevant, and immaterial and an attempt to alter or vary the terms of a written instrument, a copy of which was attached to the Stipulation of Facts as Exhibit U–1. This motion
86 to strike the answer was allowed by the Board and counsel for petitioner noted and was allowed an exception.

Thereupon the following question was propounded to the witness by counsel for the petitioner: "Q. Were you present at any conference in September 1929 between representatives of the Midwest Oil Company, the Wyoming Associated Oil Corporation, and the State of Wyoming"? The above question was objected to by counsel for the respondent and the objection was sustained. Whereupon the counsel for the petitioner noted and was allowed an exception.

CROSS EXAMINATION

I am familiar with the manner in which payments were made to the State of Wyoming of its royalties under Section 36. These payments were made during the year 1925 by oil in kind which was delivered to the State of Wyoming or its nominee. The oil was delivered directly from the measuring tank to the common carrier that received it on behalf of the purchaser from the State. There was no money settlement between either the Midwest Oil Company or the Wyoming Associated Oil Corporation and the State of Wyoming. The State's royalty oil was purchased during the year 1925 by either the White Eagle or the Empire Oil and the State was paid directly by the purchaser for its share of the oil produced from Section 36. (Witness excused.)

Thereupon, counsel for the petitioner offered in evidence an abatement claim, filed by the Wyoming Associated Oil Corporation with the Collector of Internal Revenue at Denver, Colorado, under date of August 30, 1923, covering the period January 1, 1922, to December 31, 1922, in which claim the Wyoming Associated Oil Corporation contended that its share of the income received from Section 36 was exempt from Federal taxation. Said claim was offered by counsel for petitioner for the purpose of showing that the officials of the Wyoming Associated Oil Corporation had the question of exemption in mind at or about the date on which the lease of April 19, 1923 (Stipulation of Facts, Exhibit U–1) was made. Counsel for respond-

ent objected to the introduction of the claim and the objection was sustained by the Member. Counsel for the petitioner noted and was granted an exception.

87 Thereupon counsel for the petitioner offered in evidence another abatement claim filed by the Wyoming Associated Oil Corporation with the Collector of Internal Revenue at Denver, Colorado, May 27, 1922, which claim also contains the claim of exemption with respect to the proceeds of oil from Section 36.

Counsel for respondent objected and the objection was sustained, whereupon counsel for the petitioner noted and was granted an exception.

Thereupon both parties rested their case.

Stipulation re statement of evidence

The parties to this proceeding agree that the foregoing is all of the material evidence adduced at the hearing before the United States Board of Tax Appeals bearing upon the issues raised in the Petition for Review, and consent is hereby given to an order being entered by the United States Board of Tax Appeals approving the same.

RANDOLPH E. PAUL,
CHARLES B. MCINNIS,
Attorneys for the Petitioner,
Transportation Building, Washington, D. C.
MORRISON SHAFROTH,
Counsel for the Respondent.

Order approving statement of evidence

The foregoing Statement of Evidence sets forth all of the material evidence adduced at the hearing of this cause bearing upon the issues raised in the Petition for Review, and, in order that the same may be preserved and made a part of this record, said Statement of Evidence is duly approved, settled, and ordered filed this 12th day of December 1936.

(s) EUGENE BLACK, *Member,*
United States Board of Tax Appeals.

Exhibit B

This Contract made and entered into this 3rd day of June, 1911, by and between William M. Fitzhugh, party of the first part,

88 and the Midwest Oil Company, hereinafter called the "Oil Company," party of the second part, and O. H. Shoup, party of the third part, Witnesseth:

That Whereas on even date herewith said Fitzhugh has made, executed, and delivered a quit claim deed to the party of the third part to be held by the party of the third part for the benefit of the party of the second part, and there will shortly be executed and delivered to said O. H. Shoup a deed by the wife of said Fitzhugh, also con-

veying all her right, title, and interest in the same property to be held for the benefit of the second party; and,

Whereas, the said Fitzhugh has on even date herewith made, executed, and delivered an assignment to the Oil Company of all his right, title, and interest in that certain agreement made and entered into on November 27th, 1909, between Stock Oil Company and the said Fitzhugh, and also all his right, title, and interest in that certain lease to said Fitzhugh from the State of Wyoming, dated January 4th, 1910; and,

Whereas, William G. Henshaw, of San Francisco, California, makes, or has made certain claims of interest in said property, and it is the intention of the said grantors in said deeds and assignments, therefore, simply to convey what interest they have in said property to the interests of said Henshaw whatever they may be and as they have, and as such interests may hereafter appear without derogation to the interests of sair Henshaw whatever they may be and as they shall hereafter appear.

Now, Therefore, In consideration of the premises and of the faithful performance of the terms and conditions hereinafter set forth, and of one dollar and other good and valuable considerations, in hand paid said Fitzhugh, the receipt of which is hereby confessed and acknowledged, the said Fitzhugh and the other parties have agreed, and do hereby agree with each other as follows, to-wit:

1. The interest conveyed by said grantors in and to what are known as located lands, specified in said conveyances (a copy of one of which, describing the property, is hereunto attached), not including therein the lands described in the agreement with the Stock Oil Company, or in the said lease from the State of Wyoming amounts in the aggregate to not less than an undivided two-eighths interest in said property.

89 2. The said party of the third part agrees that he will hold the title to the interest in lands so conveyed to him, solely for the benefit of the Oil Company and upon demand of the Oil Company will convey said premises to said Oil Company; and without the consent of said Fitzhugh will convey said premises to no other person, association or corporation, save and except the said Oil Company; and that while he holds title to the lands in his name they shall be subject to the sole use of the Oil Company for the purpose of enabling it to comply with the terms and conditions of this agreement, except that said lands may be subjected to rights of way for oil pipe lines.

3. The Oil Company will immediately proceed to endeavor to secure a settlement with Henshaw of the respective interests of Shoup and Henshaw in the lands described in said conveyances, agreement, and lease, and, if possible, to secure a partition of lands according to said respective interests. No settlement or partition of said lands or of interests under said agreement or said lease shall be made which results in less than twenty-five per cent of said lands being parti-

tioned or set aside to said Shoup, unless said Fitzhugh and the Oil Company agree to settlement under a less amount; if said Oil Company can secure a settlement or partition on the basis of twenty-five per cent interest therein for said Shoup, then if said Fitzhugh so desires, said settlement and partition shall be accepted; if necessary, suit or suits shall be brought by the Oil Company to effect partition; the Oil Company paying all of the expense of conducting litigation, partition, and settlement proceedings; this does not include any obligation to pay any purchase price.

4. When such settlement or partition has been made the Oil Company shall for its services receive the right to take for its own use one-third of all the oil contained in said lands without any other charge or expense to it; and two-thirds of the oil in said lands shall be the property of said Fitzhugh. As to located lands, the Oil Company shall perform the annual assessment work necessary to maintain possessory title thereto under the laws of the United States; or may contribute the proportion of the expense of said work proportionately with others claiming ownership therein; but with or without contribution shall see that such assessment work is done.

90 This section applies to located lands on which discoveries have been made. Two-thirds of the expense of such assessment work shall be charged against the account of such Fitzhugh to be paid out of the amount to become due to him upon the purchase of said oil as hereinafter set forth.

5. Said Fitzhugh at the request of the Oil Company shall do and perform all things which the Oil Company requests him to do in the way of co-operating toward the making of such settlement or partition, and toward perfecting and maintaining title to the interests in said property so conveyed; but said Company shall have charge of all such matters and said Fitzhugh shall, so far as he participates therein, do so only under the directions of the Oil Company, but said Fitzhugh shall be at all times consulted about and kept advised concerning the progress of negotiations or litigation.

6. After partition or settlement of the lands has been effected fifty per cent of all oil handled through the pipe line or pipe lines of the Oil Company shall be taken from said lands so segregated or partitioned; if such lands are capable of producing oil up to that amount; two-thirds of said fifty per cent so handled to be the property of Fitzhugh and one-third to be the property of the Company; if Fitzhugh at any time is dissatisfied with the amount of development being done to produce oil he shall have the right at his own expense to enter upon the lands so segregated and sink wells, paying all the costs thereof; after which the Oil Company shall apply its pumps thereto for the purpose of producing oil therefrom.

7. For the said Fitzhugh oil at all times when the price of crude oil, f. o. b. Casper, is sixty-two and one-half cents or greater; he shall be paid thirty-seven and one-half cents per barrel; and when said price of crude oil is less than sixty-two and one-half cents per barrel,

f. o. b. Casper, then for said Fitzhugh oil he shall be paid by the Oil Company sixty per cent of the price received, and the Oil Company shall receive forty per cent for its cost of production and carriage; the price of sixty-two and one-half cents is composed of thirty-seven and one-half cents payment to Fitzhugh per barrel; twenty cents pipe line charge, and five cents cost of production to the Company, and the prices received less than sixty-two and one-half cents per barrel are to be divided as aforesaid, sixty per cent to Fitzhugh as payment for his oil and forty per cent to the
91 Company as payment for its transportation and cost of production. Whenever said oil is taken from ground that is leased, Fitzhugh shall pay two-thirds of the royalty accruing to the lessors and the Company one-third.

8. The Oil Company shall have the right to use the oil free of charge so far as needed for fuel in connection with production of said oil or for use in the pumping plant in pumping the proportion of oil so to be paid for to said Fitzhugh.

9. The Oil Company shall pay Fitzhugh One Thousand Dollars a month, the first payment to be made at the time of executing this contract and One Thousand on or before the 5th day of each month hereafter succeeding for ten months, or until a total of Ten Thousand Dollars has been so paid to said Fitzhugh; the amount so paid shall be charged against Fitzhugh's account as advance payments upon oil hereafter to be handled and paid for to him as hereinabove provided.

10. If for any reason the assignment of the lease from the State of Wyoming is not accepted by the State, so that the legal title thereto must remain in the name of said Fitzhugh, then this contract shall apply to him as to that tract of land, as Trustee, and he shall hold the same under such circumstances as Trustee, for the sole use and benefit of the Oil Company.

11. After said lands have been segregated, the Oil Company shall proceed diligently in the work of developing the same for oil with the object of enabling production therefrom of oil in a quantity up to fifty per cent of the amount actually being handled from the field through its said pipe line or pipe lines; but it shall not be required nor the said Fitzhugh permitted to produce oil from said lands in excess of said amount; and the Oil Company shall have the sole and exclusive right to purchase two-thirds of the fifty per cent of the oil so handled at the price and upon the terms of Paragraph 7 set forth; settlement for the oil so to be purchased from said Fitzhugh during any one month shall be made by the Oil Company to Fitzhugh on or before the tenth day of the month succeeding that in which said oil is so purchased.

12. The oil produced from the segregated property shall be
92 pumped into a separate tank or tanks by the Oil Company and there measured before being transported from the district or mixed with any other oil; and the oil actually being handled through

the pipe line or pipe lines of the Company shall likewise be measured; and said Fitzhugh shall have the right at any and all times by himself or his agents, to inspect the amount of oil produced from such segregated lands and to measure and check measurements of oil produced therefrom, and to inspect the reports of said Oil Company so far as they pertain to or in any way cover or affect the oil production in said Salt Creek District, said District being the territory from which the oil handled by the pipe line or pipe lines—fifty per cent of which amount handled is affected by this contract—is produced.

This contract shall be binding upon and extend to the heirs, executors, administrators, successors, and assigns of the respective parties; the obligation of the party of the third part hereunder being exclusively set forth in Paragraph 2 hereof.

In Witness Whereof the individual parties hereto have hereunto set their hands and seals and The Midwest Oil Company has caused these presents to be executed in its corporate name, by its officers thereunto duly authorized, the day and year first hereinabove written.

WILLIAM M. FITZHUGH, [SEAL].
O. H. SHOUP, [SEAL]
THE MIDWEST OIL COMPANY,
By O. H. SHOUP, *President.*

[SEAL OF MIDWEST OIL CO.]
Witnesses as to Fitzhugh and Shoup:

K. C. SCHUYLER.
J. L. WARREN.

(Verifications attached.)

Exhibit C

This Memorandum of Agreement, made and entered into this 24th day of July 1911, by and between Wm. G. Henshaw, Hetty T. Henshaw, Helen W. Henshaw, Tyler Henshaw, Alla S. Chickering, Henry D. Nichols, Ethel K. Nichols, E. M. Hall, Lillie T. Hall, F. W Henshaw, H. J. Knowles, W. H. Metcalf, A. H. Chickering, C. T. Rudolph, Emil Nuesbaumer, P. C. Black, and Harry Chickering, all of the State of California, parties of the first part, and O. H. Shoup, trustee, of the county of El Paso, State of Colorado, party of the second part, Witnesseth, That,

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Whereas, The parties of the first part are the owners of certain interests in various located oil placer mining claims, and of interests in leases and agreements upon and affecting located and patented oil-bearing lands in the Salt Creek Oil Fields, in Natrona County, State of Wyoming, and particularly in a certain lease upon section thirty-six, township forty, range seventy-nine west (Sec. 36, Tp. 40, R. 79 W.), granted by the State of Wyoming to William M. Fitzhugh, and by the latter assigned to the Midwest Oil Company, and in the certain lease granted by the Stock Oil Company to William M. Fitzhugh, and in certain agreements or leases from H. E. Stock, J. E. Stock, and others, with William M. Fitzhugh, and also in certain

drilling machinery and outfits, fixtures, and other appurtenances and personal property situate in, near or upon said property, and are desirous of selling all their right, title, interest, and estate of every kind and nature whatsoever in and to said property, leases, agreements, machinery, fixtures, appurtenances, and personal property, and the party of the second part as trustee for the Reed Investment Company, a corporation organized and existing under and by virtue of the laws of the State of Colorado, is desirous of securing in its behalf the exclusive right, option, and privilege to purchase from the parties of the first part all their said right, title, interest, and estate.

Now, Therefore, in consideration of the sum of thirty-five thousand dollars ($35,000.00) cash, in hand paid by the party of the second part to the parties of the first part, the receipt of which is hereby confessed and acknowledged, the parties of the first part have given and granted, and by these presents do give and grant, unto the party of the second part, his heirs, executors, administrators, or assigns, as trustee of said The Reed Investment Company, its successors and assigns, the exclusive right, privilege, and option to purchase of and from the parties of the first part, their heirs, executors, administrators, successors, or assigns, all said property, the description of which is hereinafter specified, at and for the total price and sum of three hundred and twenty-five thousand dollars ($325,000.00), upon the terms and conditions as hereinafter set forth, to-wit:

94 Thirty-five thousand dollars ($35,000.00) cash in hand to be paid upon the deposit of certain papers in escrow, hereinafter referred to coincident with the execution and delivery of this agreement, the receipt of which is hereby confessed and acknowledged, as the first payment and also as the consideration for the granting of this option as hereinabove specified.

One hundred thousand dollars ($100,000.00) on or before four (4) months from the date hereof.

Sixty-five thousand dollars ($65,000.00) on or before six (6) months from the date hereof.

One hundred and twenty-five thousand dollars ($125,000.00) on or before the first day of June 1912.

Provided, however, and it is agreed, that if and when the party of the second part makes any payment upon this option, he shall, at the date of making such payment, add and pay to the parties of the first part, in addition to the amount of such installment, an amount of money equivalent to six (6) per cent interest on the deferred portions of the price for which the property may be purchased hereunder.

And the parties of the first part, in consideration aforesaid, have agreed and hereby do agree to sell, convey, and transfer unto the party of the second part, his heirs, executors, administrators, successors, or assigns, in trust for The Reed Investment Company, its

successors or assigns, all their and each of their right, title, interest, and estate in and to all said property hereinabove and hereinafter referred to at any time, upon payment of the purchase price above stated.

The parties of the first part agree that coincident with the execution and delivery of this instrument proper conveyances of all their said right, title, interest, and estate and in and to all said property shall be signed and acknowledged by the parties of the first part, according to their respective interests therein, to the said The Reed Investment Company, which said conveyances then and there shall be placed in escrow with The Bank of California Nat. Ass'n. of San Francisco, to be delivered by said bank to the party of the second part, his heirs, executors, administrators, successors, and assigns, upon the completion of the payments hereinabove specified.

95 The said party of the second part, in case default be made in any payment or payments herein provided to be made, shall forfeit all sums theretofore paid to the parties of the first part, as and for liquidated damages, and all the rights of the said party of the second part hereunder shall immediately terminate, and his rights in, to, and concerning all of said property shall thereupon cease, and all conveyances so held by said escrow holder, upon such default shall be immediately delivered back to the parties of the first part; likewise, upon default, the party of the second part shall be in all respects released from all responsibility to make any further payments unto the parties of the first part, it being agreed that this instrument is an option granted to the party of the second part to purchase, upon the terms above stated, and not an obligation on his part so to do.

The party of the second part shall have the immediate possession of all of said property, and in the event any payment (provided to be made herein is not made as provided to be made) herein, then the parties of the first part shall have the right of immediately entering into the possession of said property and all thereof, and the party of the second part shall immediately surrender to the parties of the first part peaceable possession of said property and every part thereof.

The party of the second part also promises, agrees, and covenants to do and perform all the work or assessment work upon any and all of said locations now containing discoveries, required to be done by the laws of the State of Wyoming or the United States, or upon any lands by any private agreement or leases, and agrees to do the same as soon as possible and in every case to have the said assessment work fully performed and completed by the first day of November 1911, and in case said work, or any thereof, is not completed by said November 1st, said parties of the first part may re-enter into the possession of all of said property both real and personal and do such work as is not done at the charge and cost of the party of the second part, and may recover such cost from said party of the second part by action or otherwise.

In the event this option is finally exercised by the party of the second part, and full payments made, then the party of the second part, upon delivery of the leases and agreements hereunder to
96 be transferred, shall assume all the obligations thereof, required to be performed by grantee therein, so far as such obligations are binding upon the parties of the first part, or any of them.

The party of the second part shall have the right to use all of the machinery and property above referred to for the purpose of doing assessment and development work upon the said lands or any of them, but if default is made by said parties of the first part in any of the payments provided to be made herein, then any personal property used or consumed or injured or impaired by the said party of the second part shall be accounted for and replaced and restored to as good condition as when received by said party of the second part, ordinary wear and tear excepted; but this paragraph shall not apply to live stock, stock feed, groceries, and provisions now on hand at the camp of the parties of the first part in said field; as to the said live stock, party of the second part may, in thirty (30) days, purchase such thereof as he may desire, at a price to be agreed upon between Wm. G. Henshaw and the party of the second part; as to stock feed, groceries, and provisions now on hand, the party of the second part may use the same, but in the event of default hereunder shall either immediately replace the same amount of such articles, or pay the actual cost thereof; in the event of no default hereunder, the actual cost of such articles shall be paid for at cost by the party of the second part to the parties of the first part.

Time shall be of the essence of this agreement and of the making of all of the payments herein provided to be made, and runs to and binds the heirs, administrators, successors, representatives, and assigns of the parties hereto.

The mining locations and properties herein referred to and contemplated to be conveyed are situated in the so-called Salt Creek Oil Fields near Casper, in Natrona County, Wyoming, and also include all first parties' interest in a lease from the Stock Oil Company, and in a certain agreement between Wm. M. Fitzhugh and H. E. Stock, J. E. Stock, and others affecting certain lands in said county, and in a lease from the State of Wyoming to School Section Number thirty-six, Township forty, Range seventy-nine West (Sec. No. 36, Tp. 40, R. 79 W.), and for more specific description of the located lands and other rights conveyed reference is hereby made to
97 the deeds and transfers of even date herewith, placed in escrow in connection herewith.

All sums of money herein contemplated to be paid by the party of the second part shall be paid to The Bank of California Nat. Ass'n of San Francisco and shall by said bank be placed to the credit of Wm. G. Henshaw, who shall have the full, absolute and complete disposition and control of the same; upon such payments being duly made, the said bank shall give to the party of the second part an

acknowledgment and receipt therefor, which shall be a full acknowledgement and receipt by the parties of the first part of such payment to them and each of them by the party of the second part.

It is agreed, that the party of the second part, or his assigns, at any time during the term of this option, while the same is in force, may produce, take, and sell from the premises and property referred to and described in said conveyances and transfers so deposited in escrow, such an amount of oil as he or his assigns may desire, and that for seventy-five per cent (75%) of the total amount of oil so taken and produced from said premises the party of the second part or his assigns shall pay to the parties of the first part sixty (60) cents per barrel, which amount shall be paid to and received by the parties of the first part as a payment, upon the amount of the purchase price of the said property. Such amount shall be accounted for monthly by the party of the second part to the parties of the first part; in specifying said amount of 75%, such specification, it is agreed, shall not be construed as constituting any declaration binding upon any of the parties hereto as to the true extent of the first parties' interests in and to said property, affected by this agreement. The parties of the first part agree, that they are the sole persons interested in what is generally referred to and known as the Henshaw interest, as distinguished from the Fitzhugh's, in the property affected by this agreement, and that, if any person who is entitled to participate with the parties of the first part, or is in fact interested with them in the ownership of any part of said interest intended to be conveyed hereunder, through inadvertence or otherwise, has been omitted from the names of the grantors in the title papers deposited in escrow, parties of the first part will cause additional papers to be executed conveying such interests, it being expressly understood, that this clause
98 does not imply any obligation on the part of the parties of the first part with reference to the so-called Fitzhugh interest represented in the title by Wm. M. Fitzhugh and his wife.

It is further agreed, that, inasmuch as certain litigation is pending between Petroleum Maatschappig, of Salt Creek, and the parties of the first part, or some of them, and others, said litigation being commonly known as that between the Dutch and California interests, now pending in the District Court of Natrona County, Wyoming, and certain contests are pending also in the United States Land Office, affecting some of said properties, so far as the parties hereto can control the same, there shall be during the term of this option, no change whatever in the status of said litigation; the parties of the first page agree, that they will cause their counsel to cooperate with counsel for the party of the second part to maintain the present status and that, in the event any effort is made by the opponents of the parties of the first part to change the status of said litigation, or land office proceedings, the parties thereto will cooperate to maintain to the fullest extent the property rights and titles affected hereby unimpaired. All, however, at the proper cost and expense of the party of the second part.

It is expressly understood and agreed, that in the event of the failure of the party of the second part to exercise this option, and the property rights affected hereby revert to parties of the first part, then nothing in this agreement contained, or in the execution and delivery or contents of any other paper incidental to this agreement, or coincident herewith, contained, shall in any wise operate to the prejudice of any rights or claims which any of the parties hereto, whether of the first or second part, may, at any future time, see fit to assert as against the other, but in that event all the rights of the parties shall stand absolutely unimpaired, and with the same force and effect, as though this option had never been granted, or the transfers or conveyances, or other papers incidental hereto, had never been executed and the present status thereupon immediately restored; neither the granting of this option, nor its acceptance, nor any payments or payment made hereunder, shall prejudice the rights of either party as against the other, at any time, in the event of the failure of the party of the second part to make the payments aforesaid;
99 nor shall anything herein or in said other papers contained in such event be construed as a recognition, or definition of the extent of the rights of the parties of the first part, or of the party of the second part, or those identified in interest with him, or of the rights claimed by William M. Fitzhugh.

In Witness Whereof, the parties of the first part, some individually and some at this date acting through Wm. G. Henshaw, their agent and attorney in fact, and the party of the second part have hereunto set their hands and seals, the day and year first above written.

(Signed) Wm. G. Henshaw, [SEAL]
(Signed) Hatty T. Henshaw, [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(Signed) Tyler Henshaw, [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(Signed) Helen W. Henshaw, [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(Signed) Alla S. Chickering, [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(Signed) Henry D. Nichols, [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(Signed) Ethel K. Nichols, [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(Signed) E. M. Hall, [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(Signed) Lillie T. Hall, [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(Signed) F. W. Henshaw, [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(Signed) H. J. Knowles, [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*

(Signed) W. H. METCALF, [SEAL]
By WM. G. HENSHAW, *his Atty. in Fact.*
(Signed) A. H. CHICKERING, [SEAL]
By WM. G. HENSHAW, *his Atty. in Fact.*
(Signed) C. T. RODOLPH, [SEAL]
By WM. G. HENSHAW, *his Atty. in Fact.*
(Signed) EMIL NUABAUMER, [SEAL]
By WM. G. HENSHAW, *his Atty. in Fact.*
100 (Signed) P. C. BLACK, [SEAL]
By WM. G. HENSHAW, *his Atty. in Fact.*
(Signed) HARRY CHICKERING, [SEAL]
By WM. G. HENSHAW, *his Atty. in Fact.*
---------- [SEAL]

Witnesses to each signature.

(Signed) O. H. SHOUP, [SEAL]
Trustee for and acting in behalf of
THE REED INVESTMENT COMPANY,
Party of the Second Part.

STATE OF CALIFORNIA,
County of Alameda, ss:

Before me, J. L. Meyer, a Notary Public in and for said county, in the state aforesaid, on this 25th day of July 1911, personally appeared Wm. G. Henshaw, appearing individually and also as attorney in fact for Hatty T. Henshaw, Tyler Henshaw, Helen W. Henshaw, Alla G. Chickering, Harry Chickering, Henry D. Nichols, Ethel K. Nichold, E. M. Hall, Lillie T. Hall, F. W. Henshaw, H. J. Knowles, W. H. Metcalf, A. H. Chickering, C. T. Rodolph, Emil Nusbaumer, and P. C. Black, said persons being personally known to me to be the persons whose names are subscribed to the foregoing instrument, and thereupon said individuals acknowledged that they, and each of them, made, executed, and delivered the said above and foregoing instrument of writing, as their free and voluntary act and deed, and as the free and voluntary act and deed of each of them, for the uses and purposes therein set forth; and said Wm. G. Henshaw thereupon acknowledged to me, that he signed, sealed, executed, and delivered the said instrument of writing in behalf of his principals as well as in his own behalf, as their free and voluntary act and deed, and as the free and voluntary act and deed of each of them, acting under a power of attorney from his said principals; all for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and notarial seal, this 25th day of July 1911. My commission expires March 5, 1913.

[NOTARIAL SEAL] (Signed) J. L. MEYER,
Notary Public within and for the
County of Alameda, State of California.

101 *Exhibit D*

This Agreement, made and entered into this 14th day of July, A. D. 1911, by and between William M. Fitzhugh of Alameda County, California, party of the first part, The Midwest Oil Company, an Arizona corporation, party of the second part, and The Reed Investment Company, party of the third part, Witnesseth:

That, Whereas, heretofore and on to-wit: the 3rd day of June, 1911, a certain contract was made and entered into between the said Fitzhugh, The Midwest Oil Company, and O. H. Shoup which contemplated the segregation of what was referred to as the Fitzhugh interest from that of his previous associates, William G. Henshaw and others, in certain so-called located lands, and a certain School section and a certain half section of the Stock Oil Company, held under lease by the said Fitzhugh, coincident with which agreement deeds were executed by said Fitzhugh, and wife to said O. H. Shoup, to be held by said Shoup subject to the purposes of said agreement and to the directions of The Midwest Oil Company, and upon segregation certain arrangements were provided for the payment for a certain proportion of the oil derived from said property to said Fitzhugh; and

Whereas the party of the third part now contemplates obtaining from said Henshaw and his associates an option for the purchase of all their right, title, and interest in and to the located lands, the School Section and said Stock Oil Company half section above referred to, and before obtaining said option desires to obtain from the parties of the first and second part an agreement as to what the segregation of lands shall be in the event it acquires finally the interests of said Henshaw and associates and to agree upon the division of oil to be produced for the purpose of procuring the full performance of said contract of June 3rd, 1911.

Now, Therefore, to the end that there may be an understanding and agreement between the parties prior to obtaining from the said Henshaw and his associates an option to purchase all their right, title, and interest in said property and other valuable considerations moving from each party to the other, the receipt of which is hereby con-

102 fessed and acknowledged, the parties hereto have agreed and hereby do agree with each other as follows, to-wit:

1. In the event an option is obtained from the said Henshaw and his associates for the purchase of all their right, title, and interest in said properties hereinabove referred to and the purchase price under said option is finally paid by the optionee or its assigns, then upon securing the conveyance of said interest of the said Henshaw and his associates in the said lands as between the interest which is to become subject specifically to the operation of the contract of June 3rd, 1911, on the one side and the purchase of the interests of said Henshaw and associates on the other, it is hereby agreed to be upon the basis that the Northwest Quarter of each location of one hundred sixty acres of located land shall be retained by O. H. Shoup under said contract subject to the directions of the Midwest Oil Company, and be

specifically subjected and held for the purpose of enabling the performance of the said contract of June 3rd, 1911, between the parties thereto, and as to the School Section 36, Township 40, Range 79 West, thirty-seven and one-half percent thereof shall be set apart and held specifically subject to said last mentioned contract for the purposes thereof, said thirty-seven and one-half per cent thereof to be the following portions, to-wit:

The Northwest Quarter, the Northwest Quarter of the Northeast Quarter, and the Northwest Quarter of the Southwest Quarter of said Section, being two hundred forty acres of said Section; and as to said East Half of Section twenty-five, being the Stock Oil Company land referred to in said contract of June 3rd, 1911, there shall be set apart and specifically held, subject to said contract, and to enable the fulfillment thereof and segregated, thirty-seven and one-half per cent of said East Half of Section twenty-five, being, to-wit: one hundred twenty acres thereof, described as follows, to-wit:

The west Half of the Northeast Quarter and the Northwest Quarter of the Southeast Quarter of said Section.

It being the intention of the parties that there shall be always held and subjected to the operation of the contract of June 3rd, 1911, thirty-seven and one-half per cent of the said School Section and the
103 said Stock Oil Company land, and twenty-five per cent of the acreage embraced in the so-called located land.

2. If in securing said option from said Henshaw and associates arrangements are made for the production from said lands, or any part thereof, and oil is actually produced from said lands, or any part thereof, prior to final payment and before segregation on the basis hereinabove provided for, then seventy-five per cent of the oil produced and handled through the pipe line shall be, during said time, considered the property of The Reed Investment Company for use by it in connection with the said option requirements, and twenty-five per cent thereof shall be considered the property of The Midwest Oil Company to be subjected to the terms of said contract of June 3rd, 1911, except as to the School Section and the Half Section of the Stock Oil Company, the proportion of oil to be considered as subject to the contract of June 3rd, 1911, shall be thirty-seven and one-half per cent of the amount produced therefrom handled through pipe line irrespective of the amount allotted to The Reed Investment Company for use under the terms of said option; and after segregation has been made The Reed Investment Company, or its assigns, then owners of the land segregated, shall, out of the oil produced from the lands so segregated to it, deliver to The Midwest Oil Company for the use of said Fitzhugh, a sufficient quantity of oil to make up for the use of said Fitzhugh that part of the oil handled through the pipeline during the period of said option, which is required to bring him two-thirds of fifty per cent of the oil handled through said pipe line during said time, said oil so delivered to The Midwest Oil Company for the use of said Fitzhugh to be paid for by The Midwest

Oil Company to the said Fitzhugh at the price set forth under the terms of said contract of June 3rd, 1911; provided that whenever said option is forfeited, if for any reason it should be, this agreement is at an end and the said contract of June 3rd, 1911, remains in full force and effect without in any respect being modified by this contract, except as to oil obtained prior to the time said option is forfeited, and provided further that no extension of time within which completion of payments is to be made to Henshaw and associates by The Reed Investment Company, or its assigns, beyond June 1st, 1912, shall be sought for or agreed to without the consent of said
104 Fitzhugh first thereunto had and obtained. The provisions of this paragraph terminate upon the final exercise of the option.

3. The Midwest Oil Company and The Reed Investment Company for themselves, their successors or assigns, agree that if said interests of said Henshaw and associates are acquired and the segregation if made upon the basis hereinabove set forth, that they will enter into no contract or arrangement that does not fully protect and enable the Midwest Oil Company to perform the obligations of said contract of June 3rd, 1911, with said Fitzhugh.

4. If no arrangement is made with said Henshaw for the purchase and acquisition of his interests on or before August 1, 1911, this contract shall be null and void.

In Witness Whereof the corporate parties hereto have caused these presents to be signed by their respective corporate officers they being first thereunto duly authorized, and the corporate seals affixed and the individual party has hereunto set his hand and seal the day and year first above written.

WILLIAM M. FITZHUGH, [SEAL]
Party of the First Part.

THE MIDWEST OIL COMPANY,
[SEAL] By O. H. SHOUP, *President.*
Attest:

J. L. WARREN, *Secretary.* [SEAL]

THE REED INVESTMENT COMPANY,
[SEAL] By A. M. JOHNSON, *Vice President.*
Attest:

O. H. SHOUP, *Secretary.*

DENVER, COLO., *July 14, 1911.*

THE MIDWEST OIL COMPANY, *City.*

GENTLEMEN: In consideration of your entering into the contract of even date herewith and with The Reed Investment Company, and to the end that my present status may be maintained until an option from Henshaw if obtained, is either exercised or forfeited, I hereby agree that until such option, if obtained, is either exercised or forfeited, my contract of June 3rd, 1911, with you and with O. H.
105 Shoup, and the contract of even date herewith with you and The Reed Investment Company shall be considered personal to me and nonassignable.

WILLIAM M. FITZHUGH. [SEAL]

Exhibit H

Thereupon the following communication was presented to the Board of Directors:

COLORADO SPRINGS, COLO., *May 10, 1912.*

To the Board of Directors of The California Oil Company:

GENTLEMEN: The undersigned is in such position that he is able to cause a quitclaim deed of the title formerly held by W. G. Henshaw and his associates, in and to the property hereinafter described, to-wit: All of Section 26, California, Los Angeles, Montana, and Idaho Placer claims, 640 acres, all in Township 40, Range 79 West; and all the right, title, and interest of The Reed Investment Company in 62½% of School Section 36, Township 40, Range 79 West and 62½% of the East Half of Section 25, both of said interests being leases upon said respective areas, and being that 62½% of each of said tracts remaining after the segregation to The Midwest Oil Company of 37½% of said School Section and said ½ Section of Stock Oil Company had been made and each had become effective under a contract of July 14, 1911, between The Midwest Oil Company, W. M. Fitzhugh, and O. H. Shoup, as Trustee, for The Reed Investment Company; to be transferred, as such title is supplemented by virtue of an agreement of segregation existing between The Midwest Oil Company and The Reed Investment Company, and is willing to cause said title to be conveyed from the present holders thereof coupled with the rights under said agreement of segregation so far as they affect said land, to your company in consideration of the issuance to the undersigned, full paid and nonassessable, of 499,995 shares of your capital stock, as a means of representing and representing the arrangement hereafter specified and in consideration of the understanding that such arrangement will be carried into effect, to-wit:

The transfer of this property although by deed absolute to your company, is upon the condition to be accepted and agreed to by
106 the stockholders of your company and subject to which stock shall hereafter be issued and transferred, as follows:

Your company is organized and intended as a close corporation representing the following proportionate interests in the stock and property, to-wit:

V. Z. Reed	64.125
O. H. Shoup	17.1
B. H. Hopkins	10.
K. C. Schuyler	5.355
J. L. Warren	.855
A. M. Johnson	.855
C. A. Fisher	.855
N. S. Wilson	.855

and the organization of the corporation was for convenience in operation and to hold the legal title intact in one entity for convenience of defending the rights of said lands; but the fact is that each stockholder according to his holdings of stock is to be and if this proposal is accepted it must be considered as agreed that he shall be, the owner

of that proportion of oil in said premises above described that his stock holdings bears to the total capital stock of the company, to-wit: the percentage of the oil contents above specified and set opposite the name of each with the right to receive said percentages, and when and as the same is produced from said ground it shall be considered to be the property of the said individuals above named in the proportion of and to the extent of the percentages above specified, and when said oil is sold it may be sold either jointly in the name of your company, and the purchase price be delivered by the purchaser directly to each of said above-named persons, or to your company as trustee, and said proceeds immediately distributed among said parties. Subject to a reservation of 10% of the amount of such proceeds for the cost of operating said property; any amount of said fund reserved remaining on hand at the end of each year shall be distributed in the above proportions; if the entire fund shall be distributed and expense be incurred each of said persons above named receiving said stock shall pay his proportionate part of said expense according to the percentages above set forth. These provisions shall be binding
107 upon any transferee of the stock of this company or any part thereof, from the above-named holdings or such transferee.
Respectfully,

(Signed) O. H. SHOUP.

Exhibit I

The board of Directors thereupon carefully considered said proposition and being of the opinion that said titles were presently and prospectively reasonably worth the sum of $499,995 upon motion duly made and seconded it was unanimously resolved that said proposition be accepted and thereupon the President and Treasurer were authorized to make, execute, and deliver said stock unto the said O. H. Shoup, Trustee, or to such persons as he might designate when conveyance in the form satisfactory to counsel for the Company should be received.

Exhibit J

DECLARATION OF TRUST

We, The Pinero Oil Company, hereby declare that we hold all the legal right, title and interest which we have in and to all the oil contained in the following described lands, situate in the County of Natrona, State of Wyoming, to-wit:

The East Half of the Northeast Quarter (E½ NE¼), the Southwest Quarter of the Northeast Quarter (SW¼NE¼), the Northeast Quarter of the Southeast Quarter (NE¼ SE¼), and the East Half of the West Half (E½, W½), of section twenty-four (24), Township 40 North, Range 79 West; known as the Otto, Engine, Pinero, and Naphtha Placer Claims;

The East Half of the East Half (E½, E½), the Southwest Quarter of the Northeast Quarter (SW¼, NE¼), and the Southwest Quarter of the Southeast Quarter (SW¼, SE¼), of Section Thirteen (13), Township 40 North, Range 79 West; known as Detroit and Motor Placer Claims.

And in and to each and every contract or lease heretofore, or which may hereafter be, entered into by us, affecting the production, sale or other disposition of said oil.

108 In Trust, nevertheless, for the following-named persons, in the proportions set opposite their respective names, to-wit:

Verner Z. Reed	44.125
Mary Dean Reed	5.000
Verner Z. Reed, Trustee for Verner Z. Reed, Jr.	5.000
Verner Z. Reed, Trustee for Margery Verner Reed	5.000
Verner Z. Reed, Trustee for Joseph Verner Reed	5.000
O. H. Shoup	17.100
H. H. Hopkins	10.000
K. C. Schuyler	5.355
J. L. Warren	.855
A. M. Johnson	.855
C. A. Fisher	.855
N. S. Wilson	.855

who shall have full right and power to produce, take and remove said oil from said premises upon the expiration or other termination of any and all contracts or leases wherein we have heretofore granted said right and power to other parties, with full right of ingress and egress to and from said premises for said purposes.

In Witness Whereof, we have hereunto, and unto eleven copies hereof, caused our corporate name to be signed and our corporate seal to be affixed by our proper officers, thereunto duly authorized, at Denver, Colorado, this 26th day of May, A. D. 1915.

THE PINEBO OIL COMPANY,
(Sd.) By TYSON DINES, JR.,
Its Vice-President.

Attest:

(Sd.) C. E. TITUS, *Secretary.* [SEAL]

109 *Exhibit L-1*

Minutes of a Special Meeting of the Board of Directors of The Wyoming Associated Oil Corporation

A Special Meeting of the Board of Directors of The Wyoming Associated Oil Corporation was held on the 18th day of July 1919 at 2 o'clock P. M. at 1010 First National Bank building, in the City and County of Denver, State of Colorado, pursuant to a waiver of notice signed by all of the Directors.

The following directors were present: N. S. Wilson, J. L. Warren, F. C. Roberts, Verner Z. Reed, Jr., D. M. Harrington, being the entire Board of Directors.

Mr. N. S. Wilson, the President, acted as Chairman of the meeting, and Mr. J. L. Warren, the Secretary, acted as the secretary thereof.

The Secretary presented the Waiver of Notice of the Meeting, signed by all of the Directors.

A written proposal was thereupon presented to the meeting and read to the Directors.

Said proposal is the following:

PROPOSAL

DENVER, COLORADO, *July 18, 1919.*

To the Board of Directors of The Wyoming Associated Oil Corporation:

GENTLEMEN: On the 17th day of June 1919, a certain Contract was entered into, to which the undersigned Mary Dean Reed is one of the parties of the third part, and the undersigned, Salt Creek Producers Association, Incorporated, is the party of the fourth part. A true and complete copy of said contract is attached to this proposal and marked "Exhibit 1."

Your corporation, The Wyoming Associated Oil Corporation, has now been organized under the laws of Delaware, to carry on the functions of the corporation referred to in said Contract (Exhibit 1) as the "New Corporation."

In view of the foregoing matters, I, Mary Dean Reed, hereby
110 propose to convey and transfer, of course to be conveyed and transferred unto The Wyoming Associated Oil Corporation, by proper instruments, all those items of property which the parties of the third part, called the "Vendors" in said contract, undertake to convey, assign, or transfer unto the corporation referred to therein as the "New Corporation."

And the Salt Creek Producers Association, Incorporated, hereby proposes to convey and transfer, or cause to be conveyed and transferred, unto The Wyoming Associated Oil Corporation by proper instruments all those items of property which the party of the fourth part, called the "Vendee" in said Contract, undertakes to convey, assign, or transfer unto the corporation referred to therein as the "New Corporation."

And, further, the undersigned jointly propose to cause the ten corporations, which are parties of the second part to said contract, and are referred to therein as the "Producing Companies," to convey and transfer by proper instruments unto The Wyoming Associated Oil Corporation, all those items of property which said Producing Companies in said contract undertake to convey, assign, or transfer unto the corporation referred to therein as the "New Corporation."

The undersigned have heretofore determined that the five shares to be issued to the directors of your corporation, under the terms of said Exhibit 1 shall be issued, one share each to N. S. Wilson, J. L. Warren, F. C. Roberts, Verner Z. Reed, Jr., and D. M. Harrington.

The undersigned, Salt Creek Producers Association, Incorporated, further represents to you that it is the holder, by five separate assignments from N. S. Wilson, J. L. Warren, F. C. Roberts, Verner Z. Reed, Jr., and D. M. Harrington, respectively, of the subscription rights for nineteen shares from each of said five persons.

The undersigned, Mary Dean Reed, further represents to your corporation that the several interests of the persons and corporations designated as "Vendors" in Exhibit 1 are as set forth in the tabulation which appears below.

In consideration of the transfer of the foregoing proper y to
111 your corporation, you shall issue its entire capital stock, consisting of Three Hundred and Fifty Thousand (350,000) shares without nominal or par value, fully paid and nonassessable, unto the following persons and corporations in the amounts set opposite their several names, to-wit:

Names		*Number of shares*
N. S. Wilson	1	
J. L. Warren	1	
F. C. Roberts	1	
Verner Z. Reed, Jr	1	
D. M. Harrington	1	
		5
Salt Creek Producers Association, Incorporated		50,000
Salt Creek Producers Association, Incorporated		107,625
Salt Creek Producers Association, Incorporated		23,472
Mary Dean Reed, Executrix of the Estate of Verner Z. Reed, deceased	30,555	
Mary Dean Reed	5,848	
Margery Verner Reed	5,848	
Verner Z. Reed, Jr	5,848	
Joseph Verner Reed	5,848	
The Equitable Trust Company of New York, Trustee	10,527	
The Equitable Trust Company of New York, Trustee	10,526	75,000
Tyson Dines, Jr., Trustee		93,898
Total Shares		350,000

Yours truly,

MARY DEAN REED.

SALT CREEK PRODUCERS ASSOCIATION, INCORPORATED,

[SEAL] By N. W. WILSON, *President.*

Attest:

J. L. WARREN, *Secretary.*

112 *Exhibit 1 to proposal*

Memorandum of Agreement made in triplicate at Denver, Colorado, this 17th day of June, 1919, by and between The Midwest Refining Company, a Maine corporation, hereinafter called the "Refining Company," as party of the first part, The Barbadoes Oil Company, The Pinero Oil Company, The Bluestone Oil Company, The Henshaw Oil Company, The Control Oil Company, The Crescent Oil Company, The Fitzhugh Oil Company, The Seattle Oil Company, The California Oil Company, all Arizona corporations, and The

Castle Creek Oil Company, a Wyoming corporation, hereinafter called the "Producing Companies," as parties of the second part, Mary Dean Reed, Individually, and as devisee and legatee under the will of Verner Z. Reed, deceased, Mary Dean Reed, as executrix of the estate of said Verner Z. Reed, deceased, Mary Dean Reed, as guardian of the estates of Verner Z. Reed, Jr., and of Joseph Verner Reed, both minors, Mary Dean Reed, as trustee for the said Verner Z. Reed, Jr., and for the said Joseph Verner Reed, and for Margery Verner Reed, Margery Verner Reed, The Equitable Trust Company of New York, a New York corporation, as Trustee for Mary Dean Reed, Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed, under Trust Agreement of October 4, 1900, said The Equitable Trust Company of New York, as Trustee for Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed under Trust Agreement of August 23, 1902, hereinafter called the "Vendors," as parties of the third part, and Salt Creek Producers Association, Incorporated, a corporation of the State of Virginia, hereinafter called the "Vendee," as party of the fourth part, Witnesseth: Whereas, the Producing Companies own certain assets, consisting chiefly of interests in oil lands in the State of Wyoming, and are desirous of selling, assigning transferring, and conveying all of their respective assets (subject to the reservation hereinafter specified) in the manner, for the consideration and subject to the terms and conditions hereinafter specified; and

Whereas, the Refining Company on to-wit the 21st day of February 1914, made a contract with the Producing Companies concerning, among other things, the oil and gas thereafter to be produced from the said oil lands in which said Producing Companies
113 were interested, said contract running for a period of twenty years from the 1st day of January 1914, and now not being satisfactory to any of the parties thereto; and

Whereas, controversies have arisen as to the interpretation of said contract of February 21, 1914, and as to the rights and duties of the respective parties thereunder and all parties thereto desire finally to settle and adjust all such controversies; and

Whereas, the Vendors and the Vendee are now and for a long time prior hereto have been the owners of the oil content of all the oil lands of each and all of said Producing Companies, except said The Castle Creek Oil Company under and by virtue of agreements and instruments, the terms of which are known to and understood by all of the parties hereto; and

Whereas, the parties hereto are now desirous of rearranging and adjusting their interrelations and respective interests in accordance with the terms and conditions hereinafter set forth.

Now, Therefore, in consideration of the premises and of the covenants and agreements to be faithfully kept and performed by the respective parties hereto, as hereinafter set forth, it is mutually covenanted and agreed by and among the parties hereto as follows, to-wit:

ARTICLE I

SECTION 1. That on or before the 15th day of July, 1919, a corporation (hereinafter referred to as the "New Corporation") shall be organized under the direction and supervision of the Producing Companies subject to the approval as to the name thereof and as to the articles of incorporation and by-laws and as to all matters of detail by the attorneys for the Vendee, and to be incorporated under the laws of the State of Delaware, with all appropriate powers and especially authorized to carry on business in the State of Wyoming. Such corporation shall have a board of five directors. Two of the first board shall be named by Mary Dean Reed, and the remaining three shall be named by the Vendee. Cumulative voting shall be provided in the charter or articles of incorporation. Such corporation shall have an authorized capital of three hundred fifty
114 thousand (350,000) shares of no par value. All expenses of incorporating and organizing said company shall be borne by said company. Of said Company, Dines, Dines & Holme of Denver, Colorado, shall be the General Counsel, and shall attend to and have supervision over all of its legal affairs.

SECTION 2. That the Producing Companies shall on or before the 20th day of July, 1919, severally convey, assign and transfer unto the New Corporation by instruments approved by the general counsel of said New Corporation, all of their respective assets of every kind and wherever situate, whether in the State of Wyoming or elsewhere; except settlements in respect of impoundments, gas and current oil to June 1, 1919; and from time to time thereafter, upon demand of the Vendee, or of the said New Corporation, will make, execute and deliver to it such deeds or instruments of further assurance in respect to said assets or any thereof as counsel for the New Corporation, will make, execute and deliver to it such deeds or instruments of further assurance in respect to said assets or any thereof as counsel for the New Corporation may advise; and on the demand of the New Corporation the Vendors agree to cause the said Producing Companies to be wound up and dissolved.

SECTION 3. That the Vendors and the Vendee shall on or before the 20th day of July, 1919, severally convey, assign and transfer as of June 1, 1919, by instruments approved by the general counsel of the said New Corporation, all of their respective interests in said oil content of all the oil lands of each and all of said Producing Companies, except said The Castle Creek Oil Company; and from time to time thereafter, upon demand of the said New Corporation, will make, execute and deliver to it such deeds or instruments of further assurance in respect to said interests or any thereof as its counsel may advise.

SECTION 4. That said Vendee shall also on or before the 20th day of July, 1919, adjust and settle, or cause to be adjusted and settled, all conflicts, controversies, disputes, and adverse claims existing or

claimed to exist between the Producing Companies or any of them on the one part and said Vendee, and any of its allied corporations or organizations on the other part, and shall on or before July 20, 1919, convey, transfer or assign to said New Corporation all titles or interests it has or controls in or to any or all of the lands
115 in which said Producing Companies claim title or interest, and said Vendee shall thereafter from time to time, as required, convey, transfer or assign to said New Corporation any and all interests, rights or titles which it may hereafter acquire or control in said land.

In consideration whereof, the Vendee covenants and agrees with the Producing Companies and with the Vendors as follows, to-wit:

ARTICLE II

SECTION 1. That on or before the 20th day of July 1919, the Vendee, in addition to the further payments hereinafter specified to be made by the Vendee, shall pay or cause to be paid the sum of Four Million Dollars ($4,000,000) in New York Exchange to The Equitable Trust Company of New York, subject to the order of Mary Dean Reed.

SECTION 2. That immediately after the acquisition by the said New Corporation of the assets to be transferred to it by the Producing Companies, by the vendors and by the Vendee, as provided in Sections 2 and 3 of Article I hereof, and in consideration of such transfer, said New Corporation shall issue certificates for its entire authorized capital of three hundred fifty thousand (350,000) shares, full paid and non-assessable, to the following named persons in the amounts set opposite their respective names, to-wit:

Name	*Number of shares*
To the persons named as Directors, as hereinbefore provided, as qualifying shares	5
To Vendee, as consideration for the adjustments and settlements provided for in Section 4, Article I, hereof (Lot A)	50,000
To Vendee, or its assignee (Lot B)	107,625
To Vendee, or its assignee (Lot C)	23,472
To the Vendors, seventy-five thousand (75,000) shares to be distributed as their respective interests may appear	75,000
Tyson Dines, Jr., as Trustee for the persons named in, and subject to the provisions of Section 3 of this Article II, hereof	93,898
Total	350,000

116 SECTION 3. That the said Tyson Dines, Jr., as trustee shall hold said ninety-three thousand eight hundred ninety-eight (93,898) shares of the stock of the New Corporation upon the following trusts, to-wit:

a. From time to time as dividends on said stock may be declared, and paid, and other moneys come into said trustee's hands, to pay over all said funds to the Vendee or its order, unto such time as the aggregate of said funds plus the dividends paid on the twenty-three thousand four hundred seventy-two (23,472) shares of the stock of said New Corporation, issued in the Vendee as "Lot C" above de-

scribed, shall equal the principal sum of Four Million Dollars ($4,000,000), plus interest on said principal sum of Four Million Dollars ($4,000,000), at the rate of six per cent (6%) per annum from the 20th day of July 1919, until paid. Interest shall be payable yearly and all payments made by said Trustee to the Vendee and all dividends received by the Vendee on the stock described as said (Lot C) shall be deemed payments on account of interest theretofore payable, and after payment of interest shall be deemed to be payments on account of said principal sum of Four Million Dollars ($4,000,000), but no interest shall be charged or paid upon interest.

b. As soon as the payments provided for in Paragraph a last above set out are completed in accordance with the provisions of said paragraph a, and in any event not later than twenty-one years after the death of said Tyson Dines, Jr., said trustee shall wind up the trust immediately by assigning and transferring all of said stock so held in trust by him to said Vendors, as their respective interests may appear. In the same proportion, he shall pay over to said Vendors any moneys remaining in his hands.

c. As long as said stock remains subject to said trusts, it shall be voted by said trustee.

d. In the event of the resignation, death of inability of said Tyson Dines, Jr., to act as said trustee, he shall be succeeded by a successor in trust to be named by Mary Dean Reed, who shall be subject to all the duties and exercise all the rights hereinabove conferred upon said Tyson Dines, Jr.

SECTION 4. That as further consideration for the agreement of the Vendors herein set forth, the Vendee shall make further pay-
117 ments to the Vendors and to Tyson Dines, Jr., Trustee, as their respective interests may appear; said payments to be made on or before the 20th day of each month, beginning with July 1919, and continuing through the month of December 1933; the final payment to be made on or before the 20th day of January 1934. The aggregate sum to be paid on any given payday shall be determined as follows:

Five days before each said payday the Refining Company and the New Corporation shall render a joint written statement to the Vendee of the total number of barrels of crude oil which under Exhibit A hereto attached, is to be finally settled and paid for in full on the 20th day of the current month, including in such number all barrels released from Government impoundment and not settled for previously.

The said total number shall be multiplied by four and eight hundred twenty-six thousandths cents ($0.04826), and the aggregate payment distributable on that payday shall be the product of such multiplication, provided the given payday occurs prior to the winding up of the trust as specified in paragraph b of Section 2 of this Article II; if it occurs after such winding up, the total product of such multiplication shall go to the Vendors as their interests may then appear.

If and whenever prior to January 1, 1934, the Refining Company

shall increase the base price as defined in Exhibit A, attached hereto, upon which its settlements for crude oil are made with the New Corporation, to one dollar forty-two and a half cents ($1.425) or more per barrel, then the foregoing payments shall cease for such period as said base price may remain at or above one dollar forty-two and a half cents ($1.425) per barrel, but said payments shall be resumed whenever said base price for crude oil may be placed below one dollar forty-two and a half cents ($1.425) per barrel.

ARTICLE III

It is mutually agreed:

SECTION 1. That on or before the 20th day of July 1919 a contract in the form set out in Exhibit A, hereto attached, shall be executed by the parties thereto, to-wit: the New Corporation and the Refining Company.

SECTION 2. That all matters and disputes between the Refining
118 Company and each and all of the other parties hereto have been and now are hereby finally settled and adjusted and that said contract of February 21, 1914, shall be rescinded as of June 1, 1919, on the date of the execution of Exhibit A, by the parties thereto, provided that all rights of the Vendors in or to any moneys impounded by the Refining Company at the instance of the United States Government shall, as soon as possible, be adjusted and any moneys thereupon due to the Vendors, or any thereof, shall be paid to the said Vendors as their respective interests may appear.

SECTION 3. That the true intent and meaning of this contract is that for the considerations herein mentioned all property and interests in the Salt Creek Oil Fields, owned by the late Verner Z. Reed at the time of his death, and coming within the general arrangement made by him in his life time, by which he accepted sixty-four and one hundred twenty-five thousandths per cent (64.125%) of such property and interests, should be vested in the New Corporation and all such further assurances as may be necessary to carry out such intent shall be executed. These interests include those in The Colorado Oil Purchasing Company, The Economy Oil Company of Montana, The Success Oil Company of Montana, The Jantha Mining Company, and The New Bradford Oil Company.

SECTION 4. That the Refining Company shall at all times pay the New Corporation at least as much as the Refining Company pays The Midwest Oil Company for crude oil, and shall make with said New Corporation as favorable a contract covering gas production and use as it from time to time has with The Midwest Oil Company.

SECTION 5. That whenever the Refining Company or the Vendee holds in any property an undivided or joint interest with the Producing Companies or the Vendors, such undivided or joint interest shall be promptly turned over to the New Corporation.

SECTION 6. That benefits and burdens of this agreement inure to and shall be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

In Witness Whereof, the corporate parties hereto have caused their corporate names to be signed and their corporate seals to be
119 affixed by their respective officers thereunto duly authorized and the other parties have hereunto affixed their hands and seals at Denver, Colorado, the day and year fiorst aboye written.

[CORPORATE SEAL] THE MIDWEST REFINING COMPANY,
By (Sgd.) T. A. DINES, *Its Vice-President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE BARBADOES OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE PINERO OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE BLUESTONE OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE HENSHAW OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE CONTROL OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE CRESCENT OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

120 [CORPORATE SEAL] THE FITZHUGH OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE SEATTLE OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE CALIFORNIA OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*
Attest:
C. E. TITUS, *Secretary.*

[CORPORATE SEAL] THE CASTLE CREEK OIL COMPANY,
By (Sgd.) MARY DEAN REED, *Its President.*

Attest:
C. E. TITUS, *Secretary.*

MARY DEAN REED,
Individually and as devisee and legatee under the will of Verner Z. Reed, deceased.
MARY DEAN REED,
As Executrix of the Estate of said Verner Z. Reed, deceased.
MARY DEAN REED,
As Guardian of the Estate of Verner Z. Reed, Jr., and of Joseph Verner Reed, both minors.
MARY DEAN REED,
As Trustee for the said Verner Z. Reed, Jr., and for the said Joseph Verner Reed, and for Margery Verner Reed.
MARGERY VERNER REED.
THE EQUITABLE TRUST COMPANY
OF NEW YORK,
As Trustee for Mary Dean Reed et al., under Trust Agreement of October 4, 1900.
By J. N. BABCOCK, *Its Vice-President.*

Attest:
N. G. COBBINS, *Asst. Secretary.*

121 THE EQUITABLE TRUST COMPANY
OF NEW YORK,
As Trustee for Margery Verner Reed, et al., under Trust Agreement of August 23, 1902.
By J. N. BABCOCK, *Its Vice President.*
Attest: N. G. COBBINS, *Secretary.*
SALT CREEK PRODUCERS ASSOCIATION,
INCORPORATED,
By (Sgd.) N. S. WILSON, *Its Vice-President.*
Attest: J. L. WARREN, *Secretary.*
[CORPORATE SEAL]

Exhibit A to agreement

This Contract, made and entered into this ____ day of ____, 1919, by and between the_____, a corporation of the State of_____, hereafter called the Producing Company, Party of the First Part, and The Midwest Refining Company, a corporation of the State of Maine, hereafter called the Refining Company, Party of the Second Part, Witnesseth:

That Whereas, the Producing Company is in possession of and owns certain interests in oil lands situated in the Salt Creek Oil Fields, Natrona County, State of Wyoming, and is desirous of entering into an arrangement with the Refining Company for the

sale to and purchase by the Refining Company of crude oil hereafter to be produced from said lands; and

Whereas, the Refining Company is the owner of certain refining plants at Casper, Wyoming, and is engaged in the business of purchasing, transporting, refining, and marketing crude oil and the products thereof; and

Whereas, the parties hereto mutually desire to effect an agreement establishing for a term of years their relations respecting the production, purchase, and sale of crude oil upon the terms and conditions hereinafter set forth:

Now, Therefore, in consideration of the payment of One ($1.00) Dollar and other good and valuable considerations, receipt of which is hereby acknowledged, and mutual benefits derived and to be derived from the faithful performance of the terms and con-
122 ditions hereinafter set forth, the parties hereto mutually covenant and agree as follows, to-wit:

First: That all said oil lands now in the possession of the Producing Company, or hereafter in the possession of the Producing Company, in said Salt Creek Oil Fields (Natrona County, Wyoming), shall be and hereby are subjected to the terms and conditions of this agreement.

Second: The Refining Company shall, as from the first day of June 1919 to the first day of January 1934 produce from said lands of the Producing Company and purchase from that Company at least one-third (⅓) of the total amount of oil at any time then being produced or purchased by the Refining Company in or from said Salt Creek Oil Fields (Natrona County, Wyoming), subject, however, to a deduction from said one-third (⅓) of the same amount of oil as may be concurrently deducted from the aggregate deliveries of oil by The Midwest Oil Company to the Refining Company, but in no event shall such deduction exceed one-twelfth ($\frac{1}{12}$) of the total amount of oil at any time then being produced or purchased by the Refining Company in or from said Salt Creek Oil Fields (Natrona County, Wyoming); provided, that at no time shall there be any such deduction except for the purpose of enabling the Refining Company to buy Independent crude oil.

The obligation of the Refining Company to take such fraction (one-third) of said oil from the lands of the Producing Company shall continue only so long as the lands of the Producing Company are capable of producing that amount of oil, but whenever the Refining Company, either under its now existing contractual obligation, or under future modifications or changes thereof, may legally produce from said oil lands of the Producing Company and purchase from it such quantity of oil in excess of said one-third (⅓) as will make the ratio between the oil purchased from the Producing Company and the total amount of oil produced or purchased by the Refining Company in or from said Salt Creek field more nearly equal the ratio between the estimated oil content of the lands of said Produc-

ing Company and the total estimated oil content of said field, the Refining Company hereby agrees to increase the amount so produced and purchased from time to time up to the full amount of said proportion, and in excess thereof if it so desires.

123 Third: The Refining Company shall be given and granted, and hereby is given and granted, for the period extending from the first day of June 1919, to and until the first day of January 1934, subject to the forfeiture clause hereinafter set forth, exclusive possession, right of occupation and enjoyment of said oil lands of the Producing Company for the purpose of producing oil therefrom and of purchasing all oil so produced; the Refining Company shall pay all the costs of sinking wells on said lands required to produce said oil, and all expenses of the production, the storage, and the transportation thereof, except that the Refining Company shall have the use of all storage facilities, pipe lines, tools, and machinery now in said fields and used in connection with the development, production, and storage of oil, and of all buildings in connection therewith, and shall have free of charge the oil and gas used in connection with drilling and domestic service on the lands of the Producing Company.

As to the gas produced over and above that used in drilling and domestic service as aforesaid, the Producing Company reserves the right of entry for the purpose of conserving and utilizing the gas and values thereof.

A deduction of three per centum (3%) for moisture and basic sludge shall be allowed upon crude oil.

Fourth: All taxes on all oil produced shall be borne one-half (½) by the Producing Company and one-half (½) by the Refining Company; all taxes on physical property shall be borne by the Refining Company.

Five: A—During the period from June 1st, 1919, to June 1st, 1922, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

When the average price received for gasoline at said Casper (Wyoming) refinery during any month is eighteen cents (18c) per gallon, and the average price received for Water White Kerosine Oil during said month is seven and one-half cents (7½c) per gallon, the crude oil taken under this contract for said month shall be settled for at the base price of one dollar thirty-two and one-half cents (1.32½) per barrel. If the average price received by the Refining Company during any month for gasoline at its Casper (Wyoming)

124 Plant, shall be less or more than eighteen cents (18c) per gallon, then for each cent increase or decrease over or under said sum of eighteen cents (18c) there shall be added to or subtracted from said base price of one dollar thirty-two and one-half cents ($1.32½) five cents (5c) per barrel in order to compute the settlement price of crude oil for said month, and if the said average price received by the Refining Company at its said Casper Plant for Water White Kerosine Oil shall be less or more than seven and one-half

cents (7½c) per gallon, then for each cent increase or decrease over or under said sum of seven and one-half cents (7½c) there shall be added to or subtracted from said base price of one dollar thirty-two and one-half cents ($1.32½) two and one-half cents (2½c) per barrel in order to compute the settlement price of crude oil for said month. Decreases or increases of less than one cent (1c) in the price of either gasoline or Water White Kerosine Oil shall be figured proportionately.

B—During the period from June 1st, 1922, to June 1st, 1925, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

On or before the first day of May 1922, the Producing Company shall notify the Refining Company in writing whether the Producing Company elects to accept for the period of three (3) years, beginning June 1, 1922, the price fixed as provided in sub-division A, Paragraph Five, hereof, or to accept for said period a price fixed as in said sub-division A, Paragraph Five, but with a variation in price of crude oil of seven cents (7c) per barrel for each variation of one cent (1c) in the average price of gasoline per gallon, and a variation of three and one-half cents (3½c) per barrel for each variation of one cent (1c) in the average price of Water White Kerosine Oil per gallon, and the Refining Company shall pay for Crude Oil in accordance with such election.

C—During the period from June 1, 1925, to June 1, 1928, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

125 On or before the first day of May, 1925, the Producing Company shall notify the Refining Company in writing which of the two options as to price set out in sub-division B of this paragraph Five, it elects to accept, and the Refining Company shall pay for Crude Oil in accordance with such election.

D—During the period from June 1, 1928, to June 1, 1931, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

On or before the first day of May, 1928, the Producing Company shall notify the Refining Company in writing which of the two options as to price set out in subdivision B of this Paragraph Five it elects to accept, and the Refining Company shall pay for Crude Oil in accordance with such election.

E—During the period from June 1, 1931, to January 1, 1934, the price to be paid by the Refining Company to the Producing Company for oil purchased by the Refining Company from the Producing Company shall be fixed and determined as follows:

On or before the first day of May, 1931, the Producing Company shall notify the Refining Company in writing which of the two options as to price set out in sub-division B of this paragraph Five,

it elects to accept, and the Refining Company shall pay for Crude Oil in accordance with such election.

It is understood that in no event shall the price paid for Crude Oil hereunder be less than sufficient to enable the said Producing Company to pay all the present existing royalties or charges upon oil produced in said lands.

Six: Payments for oil purchased by the Refining Company from the Producing Company shall be made to the Producing Company at the Producing Company's office on or before the twentieth day of the month succeeding the calendar month in which the oil is produced, provided one-third (⅓) of the total Salt Creek oil taken into the Casper refinery during the said calendar month, except the so-called "independent oil," shall be paid for and variations between such amount and the actual production of the Producing Company shall be adjusted and settled for at the end of each year of the contract, or sooneer if possible.

126 Seven: If at any time during the term of this contract the Government, either State or National, shall exact a royalty on any oil taken from the lands of the Producing Company, the Refining Company will either purchase from such Government said royalty oil or if the Producing Company has purchased said royalty oil the Refining Company will purchase it from the Producing Company at the price paid by the Producing Company for such royalty oil; provided, that the Refining Company shall be given the exclusive right to agree in behalf of the Production Company with the Government as to the price to be paid for such oil.

Eight: The Refining Company at all times shall operate said lands of the Producing Company in all proper and reasonable ways for the protection and conservation of the oil and gas content thereof, and for the production of the maximum amount of Crude Oil purchasable by the Refining Company hereunder. In the event that the drilling, production or conservation methods of the Refining Company shall not meet the approval of the Engineer who may be employed by the Directors on the Board of the Producing Company selected by Mary Dean Reed or her nominee, the said Engineer and the Engineer of the Refining Company shall select a third Engineer, and the decision of a majority of these three engineers on any point at issue shall prevail as to the future proceeding on such point. The Refining Company shall be furnished by the Producing Company with copies of all leases, contracts and written obligations pertaining to the operation of said lands, or any part thereof, and if in doubt as to the scope or meaning of such leases, contracts or obligations shall on request be advised by counsel of the Producing Company in respect thereto, and thereupon the Refining Company shall faithfully perform the terms of all such contracts and leases and sustain such obligations, except that the Refining Company shall not pay any royalties or charges which may be either now fixed upon said lands, or any part thereof, or may be hereafter arranged between said producing Company, as owner and occupant of said lands

or interest therein, and third parties for contracts affecting said lands, or as between the Producing Company as Lessee and its Lessors. From time to time the Producing Company shall notify the Refining Company in writing as to any and all assessment
127 work that should be performed on or in respect to any lands of the Producing Company and thereupon in due course the Refining Company will perform such assessment work and charge the cost thereof to the Producing Company.

Nine: This agreement shall extend to the titles to said lands of the Producing Company as at present held and as the titles may hereafter be perfected or altered in any way. The Refining Company shall always respect the titles to said lands and interests of the Producing Company and shall take no steps in any way prejudicial thereto; and on the other hand if for any reason or from any cause whatever the titles of the Producing Company are changed to any form or leasehold, deed or contract differing from the present nature or status of its ownership as to all or any part of said lands, whether greater or less in extent of title or estate, this contract shall extend to such titles in their changed or altered form and such titles and alterations thereof shall be subject hereto; provided however, that nothing herein contained shall be construed to limit the right of the Producing Company to adjust litigation or claims instituted or asserted by other persons affecting the property of the Producing Company, if any such litigation or claims there be, and the Refining Company shall release from the operation of this contract any lands covered hereby and necessary to be released in effecting such adjustment.

Ten: The Producing Company shall pay all expenses in connection with the maintenance and perfection of its own titles, including charges for assessment work.

Eleven: The Producing Company may at all times maintain Gaugers and Inspectors upon said lands and shall be furnished by the Refining Company with monthly statements showing:

(a)—The total amount of oil produced from the lands of the Producing Company.

(b)—The entire amount of oil being produced from the Salt Creek Oil Field (Wyoming), itemized as to the respective parcels of land from which said oil has been produced, so far as such information is reasonably accessible to the Refining Company.

128 (c)—The number of barrels of gasoline and Water White Kerosene Oil, respectively, sold by the Refining Company and the gross price received for each product.

Twelve: Performance shall be excused by acts of God, public enemies, strikes, fires, elemental disturbances, failure of oil supply, unavoidable accidents or causes beyond reasonable control; but subject to these causes only if the Refining Company fails to comply with any of the conditions and sustain all obligations imposed upon it hereby and such failure continues for a period of sixty (60) days after notice in writing to the Refining Company from the Producing

Company then the Producing Company may at once declare this contract forfeited and terminated, and without process of law may re-enter upon said premises as of its first and former estate; or, at the option of the Producing Company it may require the Refining Company to continue the operation, insisting upon full compliance by the Refining Company, and any acceptance by the Producing Company of performance less favorable than that to which it is entitled will constitute in no way a waiver of its full rights under the contract.

Thirteen: On the first day of January 1934 possession of all the lands of the Producing Company shall be returned to it by the Refining Company.

Fourteen: This contract shall inure to and be binding upon the successors and assigns of the respective parties hereto.

In Witness Whereof, the parties have caused their respective corporate names to be hereunto signed and their corporate seals to be affixed by their proper officers, thereunto duly authorized, in duplicate, at Denver, Colorado, on the day and year first above written.

By ——— ———

Attest:

THE MIDWEST REFINING COMPANY,

By ——— ———

Attest:

——— ———

129 (Continuation of Minutes of a Special Meeting of the Board of Directors of The Wyoming Associated Oil Corporation Held on the 18th day of July A. D. 1919.)

On motion, duly seconded and unanimously carried, it was,

Resolved, that in the opinion of the Board of Directors of this corporation, the conveyance to it of the properties covered by said proposal will constitute full consideration for the issuance of the entire authorized capital stock of this corporation and will render said stock fully paid and non-assessable.

Resolved, further, that the proposal submitted and read to the directors be, and it hereby is, accepted by this corporation, upon the terms and conditions therein set forth.

Resolved, further, that upon the delivery to this corporation of instruments of conveyance, assignment or transfer to it of the properties covered by said proposal, said instruments to be satisfactory to counsel for this corporation, the proper officers of this corporation be, and they hereby are, authorized to issue and deliver certificates for the total amount of authorized capital stock of this Company, to-wit, 350,000 shares, without nominal or par value, to the persons and corporations, and in the respective amounts, set forth in said proposal; and the Board hereby declares that said stock, when issued as aforesaid, shall be fully paid and non-assessable stock, and that the property

to be conveyed, assigned, or transferred to this Corporation, as provided in said proposal, shall likewise constitute full payment for the stock of this corporation subscribed by the original subscribers and incorporators. The question of the execution of the contract marked Exhibit A and attached to Exhibit 1 which is attached to the foregoing proposal, was then considered.

On motion, duly seconded and unanimously carried, it was:

Resolved, that the proper officers of this corporation be, and they hereby are, authorized and directed to execute and deliver, in the name and on behalf of this corporation, the contract in form and substance as set forth in said Exhibit A.

The Secretary thereupon reported to the meeting that on the 17th day of July 1919, a certified copy of the Certificate of Incorporation of the Corporation, a certified copy of the General Corporation
130 laws of the State of Delaware, an Acceptance of the Constitution of the State of Wyoming, and a Certificate establishing an office and appointing a resident agent in Wyoming, were duly filed with the Secretary of State of the State of Wyoming, and all necessary fees were paid for the purpose of qualifying said Corporation to do business in said State; and that on the same date certified copy of the Certificate of Incorporation and a certified copy of the General Corporation laws of Delaware were mailed to the County Clerk of Natrona County, Wyoming, for filing, together with a check to cover the filing fees.

No further business being presented to the meeting, on motion, duly seconded and unanimously carried, the meeting adjourned sine die.

J. L. WARREN, *Secretary.*

We hereby approve the foregoing minutes:

N. S. WILSON,
D. M. HARRINGTON,
F. C. ROBERTS,
VERNER Z. REED, Jr.,
J. L. WARREN,
Directors.

Exhibit L-2

DEED

Know All Men By These Presents, that the Salt Creek Producers Association, Incorporated, a corporation of the State of Virginia, in consideration of the sum of Ten ($10.00) Dollars and other good and valuable considerations to it in hand paid by The Wyoming Associated Oil Corporation, a corporation of the State of Delaware, receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell, remise, release, quitclaim, assign, transfer, and convey unto said The Wyoming Associated Oil Corporation, and its successors and assigns forever, all its right, title, interest, estate, claim, and demand, as well in law as in equity, in or to the following described property situate in the County of Natrona, State of Wyoming, to-wit:

131 Group A

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South Half of the Northeast quarter (S½NE¼) of Section Ten (10);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Ten (10);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Ten (10);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Ten (10);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Eleven (11);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Eleven (11);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Eleven (11);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Eleven (11);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Thirteen (13);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Thirteen (13);

* * * * * * *

Lot One (1) and the South Half of the Northeast Quarter (S½NE¼) of Section Two (2);

Lot Three (3) of Section Two (2) and the Southeast Quarter of the Northwest Quarter (SE¼NW¼) of Section Two (2) except the West seven (7) acres thereof;

132 The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Ten (10);

The East half of the Southeast quarter (E½SE¼) of Section Eleven (11);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Twelve (12);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Twelve (12);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Twelve (12);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Twelve (12);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Thirteen (13);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Thirteen (13);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Thirteen (13);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Thirteen (13);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Twenty-four (24);

All the foregoing in Group D being in Township Thirty-nine (39) North, Range Seventy-nine (79) West of the Sixth Principal Meridian.

Also all the right, title, and interest of the above-named
133 grantor in or to the Northeast quarter of the Northeast quarter (NE¼NE¼); the South half of the Northeast quarter (S½NE¼); the Southeast quarter (SE¼); the Northeast quarter of the Southwest quarter (NE¼SW¼); and the South half of the Southwest quarter (S½SW¼) of Section Thirty-six (36), Township Forty (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian, under a certain lease dated December 26, 1914, from the State of Wyoming to The Midwest Oil Company.

Together with all and singular the mines, minerals, oil, gas, petroleum and all forms of mineral deposit in or under the said premises and the rents, issues and profits therefrom and all fixtures, improvements, rights, hereditaments and appurtenances thereunto in any wise appertaining.

To Have and to Hold the premises above described with their tenements and appurtenances unto said The Wyoming Associated Oil Corporation and its successors and assigns forever.

In Witness Whereof said the Salt Creek Producers Association, Incorporated, has caused these presents to be signed in its corporate

name by its officers thereunto duly authorized and to be sealed with its corporate seal this 18th day of July, A. D. 1919.

SALT CREEK PRODUCERS ASSOCIATION, INCORPORATED,
By N. S. WILSON, *Its President.*

In the Presence of us as Witnesses:
PETER H. HOLME,
HAROLD D. ROBERTS.

Attest:

J. L. WARREN, *Secretary.* [SEAL]

DEED

Know All Men By These Presents, That Mary Dean Reed as executrix of the estate of Verner Z. Reed, deceased; Mary Dean Reed as guardian of the estate of Verner Z. Reed, Jr., a minor, and as guardian of the estate of Joseph Verner Reed, a minor, and Mary Dean Reed, Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed, as successors in trust to Verner Z. Reed, deceased, trustee under separate trusts for Margery Verner Reed, and for Verner Z. Reed, Jr., and for Joseph Verner Reed (all of said persons
134 in their several capacities being hereinafter referred to collectively as "grantors"), in consideration of the sum of ten ($10.00) dollars and other good and valuable considerations to each of them in hand paid by The Wyoming Associated Oil Corporation, a corporation of the State of Delaware, receipt whereof is hereby acknowledged, do hereby severally give, grant, bargain, sell, remise, release, quitclaim, assign, transfer and convey unto said The Wyoming Associated Oil Corporation and its successors and assigns forever, all the rights, title, interest, estate, claim and demand, as well in law as in equity, which they or any of them may have or hold in or to the following described property, situate in the County of Natrona, State of Wyoming, to-wit:

GROUP A

The Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the South Half of the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) of Section Ten (10);

The Northeast quarter of the Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$) and the South half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) of Section Ten (10);

The Northeast quarter of the Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) and the South half of the Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Ten (10);

The Northeast quarter of the Southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$) and the South half of the Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section Ten (10);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Eleven (11);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Eleven (11);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Eleven (11);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Eleven (11);

135 The Northeast quarter of the Northeast quarter (NE¼ NE¼) and the South half of the Northeast quarter. (S½ NE¼) of Section Thirteen (13);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Thirteen (13);

* * * * * * *

The East half of the Southeast quarter (E½SE¼) of Section Eleven (11);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Twelve (12);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Twelve (12);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Twelve (12);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Twelve (12);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Thirteen (13);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Thirteen (13);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Thirteen (13);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Thirteen (13);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Twenty-four (24);

All the foregoing in Group D being in Township Thirty-
136 nine (39) North, Range Seventy-nine (79) West of the Sixth Principal Meridian.

Also all the right, title and interest of the above-named grantors in and to or under a certain lease dated December 26, 1914, from the State of Wyoming to The Midwest Oil Company and covering all of Section Thirty-six (36), Township Forth (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian;

Together with all and singular the mines, minerals, oil, gas petroleum and all forms of mineral deposit in or under the said premises and the rents, issues and profits therefrom and all fixtures, improvements, rights, hereditaments and appurtenances thereunto in any wise appertaining.

To Have and to Hold the premises above described, with their appurtenances unto said The Wyoming Associated Oil Corporation and its successors and assigns forever.

In Witness Whereof said grantors have hereunto set their hands and affixed their seals this 18th day of July, A. D. 1919.

MARY DEAN REED, [SEAL]
As Executrix of the Estate of
Verner Z. Reed, deceased.

As to all signatures on this page,
In the Presence of us as Witnesses:
D. M. HARRINGTON,
J. E. TOOKER.

MARY DEAN REED, [SEAL]
As Guardian of the estate of Verner Z. Reed, Jr., as minor and as guardian of the estate of Joseph Verner Reed, a Minor.

MARY DEAN REED, [SEAL]
MARGERY VERNER REED, [SEAL]
VERNER Z. REED, JR., [SEAL]
JOSEPH VERNER REED, [SEAL]
As Successors in trust to Verner Z. Reed, deceased, trustee under separate trusts for Margery Verner Reed and for Verner Z. Reed., Jr., and for Joseph Verner Reed.

137 STATE OF COLORADO,
City and County of Denver, ss:

I, Lansing E. Rowland, a Notary Public in and for the City and County and State aforesaid, do hereby certify that Mary Dean Reed, Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing, appeared before me this day in person and severally acknowledged, each for himself and not one for another: That said Mary Dean Reed signed, sealed, and delivered said instrument in her capacity as executrix of the estate of Verner Z. Reed, deceased, and as guardian of the estate of Verner Z. Reed, Jr., a minor, and as guardian of the estate of Joseph Verner Reed, a minor, as her free and voluntary

act and deed in said several capacities, and for the uses and purposes therein set forth; and that Mary Dean Reed, Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed, signed, sealed, and delivered said instrument in their capacity of successors in trust to Verner Z. Reed, deceased, trustee under separate trusts for Margery Verner Reed for Verner Z. Reed, Jr., and for Joseph Verner Reed, as their free and voluntary act and deed in said capacity, and for the uses and purposes therein set forth.

Given under by hand and notarial seal this 18th day of July, A. D. 1919. My commission expires October 31st, 1920.

[SEAL] LANSING E. ROWLAND,
Notary Public.

DEED

Know All Men By These Presents, That we, Mary Dean Reed and Margery Verner Reed, both of the City and County of Denver, State of Colorado, in consideration of the sum of Ten ($10.00) Dollars and other good and valuable considerations to us in hand paid by The Wyoming Associated Oil Corporation, a corporation of the State of Delaware, receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, remise, release, quit-claim, assign, transfer, and convey unto said The Wyoming Associated Oil Corporation, and its successors and assigns forever, all the right, title, interest, estate, claim, and demand as well in law as in equity which we or either of us may have or hold in or to the following described property situate in the County of Natrona and State of Wyoming to-wit:

138 GROUP A

The Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the South Half of the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) of Section Ten (10);

The Northeast quarter of the Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$) and the South half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) of Section Ten (10);

The Northeast quarter of the Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) and the South half of the Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Ten (10);

The Northeast quarter of the Southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$) and the South half of the Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section Ten (10);

The Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the South half of the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) of Section Eleven (11);

The Northeast quarter of the Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$) and the South half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) of Section Eleven (11);

The Northeast quarter of the Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) and the South half of the Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Eleven (11);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Eleven (11);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Thirteen (13);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Thirteen (13);

* * * * * * *

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Twenty-four (24);

All the foregoing in Group D being in Township Thirty-nine (39) North, Range Seventy-nine (79) West of the Sixth Principal Meridian.

139 Also all the right, title and interest in the above-named grantor in and to or under a certain lease dated December 26, 1914, from the State of Wyoming to the Midwest Oil Company and covering all of Section Thirty-six (36), Township Forty (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian;

Together with all and singular the mines, minerals, oil, gas, petroleum and all forms of mineral deposit in or under the said premisis and the rents, issues and profits therefrom and all fixtures, improvements, rights, hereditaments and appurtenances thereunto in any wise appertaining.

To Have and to Hold the premises above described with their tenements and appurtenances unto said The Wyoming Associated Oil Corporation and its successors and assigns forever.

In Witness Whereof we, Mary Dean Reed and Margery Verner Reed, have hereunto set our hands and affixed our seals this 18th day of July, A. D. 1919.

MARY DEAN REED. [SEAL]
MARGERY VERNER REED. [SEAL]

Both signatures in the presence of us as witnesses:

D. M. HARRINGTON,
J. E. TOOKER.

STATE OF COLORADO,
City and County of Denver, ss:

I, Lansing E. Rowland, a Notary Public in and for the City and County and State aforesaid, do hereby certify that Mary Dean Reed and Margery Verner Reed, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the foregoing instrument in writing as their free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18th day of July, A. D. 1919. My commission expires October 31, 1920.

LANSING E. ROWLAND, [SEAL]
Notary Public.

140 Deed.

Know All Men by These Presents, That The Equitable Trust Company of New York, a corporation of the State of New York, as Trustee for Mary Dean Reed, Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed, under a certain Trust Agreement of October 4, 1900, and as Trustee for Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed under a certain Trust Agreement of August 23, 1902, in consideration of the sum of Ten ($10.00) Dollars and other good and valuable considerations to it in hand paid by The Wyoming Associated Oil Corporation, a corporation of the State of Delaware, does hereby give, grant, bargain, sell, remise, release, quit-claim, assign, transfer and convey unto said The Wyoming Associated Oil Corporation, and its successors and assigns forever, all its right, title, interest, estate, claim or demand as well in law as in equity, in or to the following described property situate in Natrona County, Wyoming, to-wit:

GROUP A

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South Half of the Northeast quarter (S½NE¼) of Section Ten (10);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Ten (10);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Ten (10);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Ten (10);

The Northeast quarter of the Northeast quarter (NE¼NE¼) and the South half of the Northeast quarter (S½NE¼) of Section Eleven (11);

The Northeast quarter of the Northwest quarter (NE¼NW¼) and the South half of the Northwest quarter (S½NW¼) of Section Eleven (11);

141 The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Eleven (11);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Eleven (11);

The Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the South half of the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) of Section Thirteen (13);

The Northeast quarter of the Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) and the South half of the Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Thirteen (13);

* * * * * * *

($S\frac{1}{2}NE\frac{1}{4}$) of Section Two (2);

Lot Three (3) of Section Two (2) and the Southeast quarter of the Northwest quarter ($SE\frac{1}{4}NW\frac{1}{4}$) of Section Two (2), except the West Seven (7) acres thereof.

The Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the South half of the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) of Section Ten (10);

The East half of the Southeast quarter ($E\frac{1}{2}SE\frac{1}{4}$) of Section Eleven (11);

The Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the South half of the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) of Section Twelve (12);

The Northeast quarter of the Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$) and the South half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) of Section Twelve (12);

The Northeast quarter of the Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) and the South half of the Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Twelve (12);

The Northeast quarter of the Southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$) and the South half of the Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section Twelve (12);

142 The Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the South half of the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) of Section Thirteen (13);

The Northeast quarter of the Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$) and the South half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) of Section Thirteen (13);

The Northeast quarter of the Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) and the South half of the Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Thirteen (13);

The Northeast quarter of the Southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$) and the South half of the Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section Thirteen (13);

The Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the South half of the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) of Section Twenty-four (24);

All the foregoing is Group D being in Township Thirty-nine (39) North, Range Seventy-nine (79) West of the Sixth Principal Meridian.

Also all the right, title, and interest of the above-named grantor in and to or under a certain lease dated December 26, 1914, from the

State of Wyoming to The Midwest Oil Company covering all of Section Thirty-six (36), Township Forty (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian;

Together with all and singular the mines, minerals, oil, gas, petroleum, and all forms of mineral deposit in or under the said premises and the rents, issues, and profits therefrom and all fixtures, improvements, rights, hereditaments, and appurtenances thereunto in any wise appertaining.

To Have and to Hold the premises above described, with their tenements and appurtenances unto said The Wyoming Associated Oil Corporation and its successors and assigns forever.

In Witness Whereof said The Equitable Trust Company of New York as trustee under the trusts aforesaid has caused these
143 presents to be executed in its corporate name by its officers thereunto duly authorized and to be sealed with its corporate seal this 14th day of July A. D. 1919.

THE EQUITABLE TRUST COMPANY,
OF NEW YORK, *Trustee.*
By J. N. BABCOCK, *Vice President.*

In the presence of us as witnesses:
J. L. KEMPF.
J. T. HELMSTADT.
Attest:

W. J. ECK. [SEAL]

STATE OF NEW YORK,
County of New York, ss:

I, Frederick C. Moller, a Notary Public in and for the County and State aforesaid, do hereby certify that J. N. Babcock and W. J. Eck, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as the Vice President and Secretary, respectively, of The Equitable Trust Company of New York, appeared before me this day in person and severally acknowledged: That the said J. N. Babcock is the Vice President of said corporation and that the said W. J. Eck is the Secretary thereof, that the seal affixed on the foregoing instrument is the corporate seal of said corporation; that the same was directed to be affixed by authority of said corporation; that by authority of said corporation they respectively signed their names thereto as Vice President and Secretary; and that they signed, sealed, and delivered said instrument as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation in its capacity to trustee for Mary Dean Reed, Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed under a certain trust agreement of October 4, 1900, and as trustee for Margery Verner Reed, Verner Z. Reed, Jr., and Joseph Verner Reed under a certain trust agreement of August 23, 1902, and for the uses and purposes therein set forth.

Given under by hand and notarial seal this 14th day of July, A. D. 1919. My notarial commission expires March 30, 1921.

FREDERICK C. MOLLER,
Notary Public.

Notary Public Richmond Co., No. 143. Certificate filed in New York Co., No. 267. Register's Office No. 1319. Term expires March 30, 1921.

144 DEED

Know All Men By These Presents, That The California Oil Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona, in consideration of the sum of Ten ($10.00) Dollars and other good and valuable considerations to it in hand paid by The Wyoming Associated Oil Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware, receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell, remise, release, quitclaim, and convey unto said The Wyoming Associated Oil Corporation, and its successors and assigns forever, all its right, title, interest estate, claim, or demand as well in law as in equity, in or to the following described property situate in Natrona County, Wyoming, to-wit:

The East half of the Northeast quarter (E½NE¼) of Section Twenty-five (25);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Twenty-five (25);

The Southwest quarter of the Northeast quarter (SW¼NE¼) of Section Twenty-Six (26);

The Southwest quarter of the Northwest quarter (SW¼NW¼) of Section Twenty-six (26);

The Northeast quarter of the Southeast quarter (NE¼SE¼) and the South half of the Southeast quarter (S½SE¼) of Section Twenty-six (26);

The Northeast quarter of the Southwest quarter (NE¼SW¼) and the South half of the Southwest quarter (S½SW¼) of Section Twenty-six (26);

All the foregoing being situate in Township Forty (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian;

Also all the right, title, and interest of the above-named grantor in, to, or under a certain lease dated December 26, 1914, from the State of Wyoming to The Midwest Oil Company, and covering all of Section Thirty-six (36), Township Forty (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian.

145 Together with all and singular the mines, minerals, oil, gas, petroleum, and all forms of mineral deposit in or under the said premises, and all fixtures, improvements, rights, hereditaments thereunto in any wise appertaining.

To Have and to Hold the premises above described with their tenements and appurtenances unto said The Wyoming Associated Oil Corporation and its successors and assigns forever.

In Witness Whereof said The California Oil Company has caused these presents to be executed in its corporate name by its officers thereunto duly authorized and to be sealed with its corporate seal this 18th day of July A. D. 1919.

THE CALIFORNIA OIL COMPANY,
By (Signed) MARY DEAN REED, *President.*

In the presence of us as witnesses:

(Signed) D. M. HARRINGTON.
(Signed) J. E. TOOKER.

Attest:

(Signed) C. E. TITUS, *Secretary.* [Seal.]

STATE OF COLORADO,
City and County of Denver, ss:

I, Lansing E. Rowland, a Notary Public in and for the City and County and State aforesaid, do hereby certify that Mary Dean Reed and C. E. Titus, who are personally known to me to be the President and Secretary, respectively, of The California Oil Company, appeared before me this day in person and severally acknowledged that the said Mary Dean Reed is the President of said corporation and that the said C. E. Titus is the Secretary thereof; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that the same was thereunto affixed by authority of said corporation and that by authority of said corporation they respectively subscribed their names thereto as President and Secretary, and that they signed, sealed, and delivered the said instrument as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 18th day of July A. D. 1919. My commission expires October 31, 1920.

(Signed) LANSING E. ROWLAND, [SEAL]
Notary Public.

146 *Exhibit N*

DECLARATION OF TRUST

Know All Men by These Presents:

That Whereas The Midwest Oil Company, a corporation of the State of Arizona, is the holder of a certain lease from the State of Wyoming, dated the 1st day of October 1919, and covering all of section thirty-six (36), Township forty (40) North, Range seventy-nine (79) west, in Natrona County, Wyoming, containing six hundred forty (640) acres, more or less; and

Whereas The Wyoming Associated Oil Corporation, a corporation of the State of Delaware, is entitled to receive the undivided share in

the benefits and net proceeds realized by The Midwest Oil Company, under said lease and all renewals and extensions thereof, as hereinafter set forth;

Now, Therefore, In consideration of the premises and in consideration of other good and valuable considerations paid to The Midwest Oil Company by the Wyoming Associated Oil Corporation, said The Midwest Oil Company doth hereby declare that it holds an undivided fifty per cent (50%) interest in said lease and in the benefits and net proceeds to be realized therefrom and all renewals and extensions thereof for the use and benefit of said The Wyoming Associated Oil Corporation, and reserves the beneficial interest in the remaining fifty per cent (50%) thereof to itself.

And in consideration of the creation of the foregoing trust, said The Wyoming Associated Oil Corporation hereby covenants that it will share all of the burdens and obligations hereafter accruing under said lease with The Midwest Oil Company in the fractions hereinabove set forth, and that in the event any renewal or extensions of said lease should be made in the name of The Wyoming Associated Oil Corporation, or in their joint names, then the interest thereunder shall be held by the recipient of said lease in trust for the benefit of itself and the other party hereto in the fractions hereinabove set forth.

It is mutually agreed that this assignment shall be effective as of the first day of February 1923, and that production of oil and gas from said land on and after said first day of February shall be divided in accordance herewith.

147 And for the consideration aforesaid, The Wyoming Associated Oil Corporation hereby consents to this declaration of trust and agrees that for the period beginning February 1, 1923, this declaration of trust shall completely supersede and replace all other declarations and definitions of interest in favor of said The Wyoming Associated Oil Corporation.

In Witness Whereof Said The Midwest Oil Company, and said The Wyoming Associated Oil Corporation have caused these presents to be executed by the respective officers thereunto duly authorized this First day of February 1923.

THE MIDWEST OIL COMPANY,

[SEAL] (Signed) By A. D. AITKEN,
Vice President.

Witness:
(Signed) L. G. CROSIER.

Attest:
(Signed) H. H. BROOKS, *Secretary.*

THE WYOMING ASSOCIATED OIL CORPORATION,

[SEAL] (Signed) By JOHN T. BARNETT, *President.*

Witness:
(Signed) G. E. MURRAY.

Attest:
(Signed) J. L. WARREN, *Secretary.*

Exhibit T–1

AGREEMENT

This Agreement Made as of the First day of February, A. D. 1923, between The Midwest Oil Company, a corporation of the State of Arizona, and Wyoming Oil Fields Company, a corporation of the State of Wyoming, and The Wyoming Associated Oil Corporation, a corporation of the State of Delaware, parties of the first part, hereinafter called the "Producing Companies," and The Midwest Refining Company, a corporation of the State of Maine, party of the second part, hereinafter called the "Refining Company"; Witnesseth:

Whereas The Producing Companies among them own in the several fractions hereinafter set forth leases covering the following described lands in the Salt Creek Oil Field, Natrona County, Wyoming, to-wit:

The so-called "Schoonmaker Lease," covering the West Half
148 (W½) of Section Twelve (12), the Northwest Quarter (NW¼) and the North Half of the Southwest Quarter (N½SW¼) of Section Thirteen (13), Township Forty (40) North, Range Seventy-nine (79) West, owned an undivided 50 per cent by The Midwest Oil Company and an undivided 50 per cent by The Wyoming Associated Oil Corporation;

The so-called "Iba Lease," covering the South Half of the Southwest Quarter (S½SW¼) of Section Thirteen (13), Township Forty (40) North, Range Seventy-nine (79) West, owned an undivided 50 per cent by The Wyoming Associated Oil Corporation and an undivided 50 per cent by Wyoming Oil Fields Company;

The so-called "Stock Lease," covering the East Half (E½) of Section Twenty-five (25), Township Forty (40) North, Range Seventy-nine (79) West, owned an undivided 50 per cent by The Midwest Oil Company and an undivided 50 per cent by The Wyoming Associated Oil Corporation;

The so-called "State School Lease," covering all of Section Thirty-six (36), Township Forty (40) North, Range Seventy-nine (79) West, held in trust by The Midwest Oil Company for the benefit of The Midwest Oil Company to the extent of an undivided 50 per cent interest and for the benefit of The Wyoming Associated Oil Corporation to the extent of an undivided 50 per cent interest.

ARTICLE I

Now, Therefore, In consideration of One Dollar ($1.00) and other good and valuable considerations to them in hand paid by the Refining Company and of the agreements of the Refining Company, hereinafter set forth, the said Producing Companies hereby covenant and agree as follows, to-wit:

SECTION 1. From the date of this contract until the First day of January 1934 the Producing Companies will sell, exclusively, unto the Refining Company all of their oil produced and saved from the above-mentioned lands (except oil used on the lands for drilling,

domestic or production purposes) upon a sliding scale of prices fixed by calendar monthly periods as follows:

(A) When the average price received by the Refining Company for gasoline sold from its Casper, Wyoming, Refinery during any
149 month is 18 cents per gallon and the average price received by it for water white kerosene oil from said refinery during each month is 7½ cents per gallon, then the price of crude oil sold and purchased during said month, under this Agreement, shall be the base price of $1.42½ per barrel of forty-two (42) gallons. If the average price so received for gasoline shall be more or less than 18 cents per gallon, then for each cent increase over or decrease under said sum of 18 cents there shall be added to or subtracted from said base price 5 cents per barrel, and if the average price so received for water white kerosene oil shall be more or less than 7½ cents per gallon, then for each cent increase over or decrease under said sum of 7½ cents, there shall be added to or subtracted from said base price the sum of 2½ cents per barrel. Increases or decreases of less than one (1) cent in the price received for either gasoline or water white kerosene oil shall result in proportionate adjustments of price.

(B) On or before the First day of May 1925 the Producing Companies shall have the right to notify the Refining Company in writing whether the Producing Companies elect to accept for the period of three (3) years, beginning June 1, 1925, the price fixed as provided in sub-division A hereof, or to accept for said period a price fixed in the same manner except for a variation in the price of crude oil of 7 cents per barrel for each variation of one (1) cent in the average price per gallon received for gasoline and a variation of 3½ cents per barrel for each variation of one (1) cent in the average prices per gallon received for water white kerosene oil, and the Refining Company shall pay the Producing Companies for crude oil in accordance with such election, or if no election is made, shall pay the Producing Companies for crude oil in accordance with subdivision A hereof.

(C) On or before the first day of May 1928 the Producing Companies shall have the right to notify the Refining Companies in writing which of the two options as to price set out in sub-division B hereof they elect to accept, and the Refining Company shall pay for crude oil in accordance with such election for the period from June 1, 1928, to June 1, 1931, or if no such election is made, shall pay for crude oil in accordance with sub-division A hereof.

(D) On or before the first day of May 1931 said Producing Companies shall have the right to notify the Refining Company, in
150 writing, which of the two options, as to price set out in sub-division B hereof, they elect to accept, and the Refining Company shall pay for crude oil in accordance with such election for the period from June 1, 1931, to January 31, 1934, or if no such election is made, shall pay for crude oil in accordance with sub-division A hereof.

SECTION 2. From the date of this Agreement until the first day of January 1934 the Producing Companies will give the Refining Com-

pany free use of all storage facilities, pipe lines, buildings, and equipment owned by the Producing Companies, or either of them, upon said lands, and will also give, free of charge, so much of the oil and gas produced as may be reasonably necessary for drilling, domestic service, and production on said lands.

ARTICLE II

In Consideration of One Dollar ($1.00) and other good and valuable considerations to it in hand paid by the Producing Companies, and of the agreements of the Producing Companies hereinabove set forth, the Refining Company hereby covenants and agrees as follows, to-wit:

SECTION 1. From the date of this agreement until the first day of January 1934 the Refining Company will purchase from the several Producing Companies currently as produced all of the oil of the several Producing Companies produced and saved from said lands at the price or prices fixed by the provisions of Section 1 of Article I hereof, excepting only oil reasonably used on the land in connection with drilling, domestic, or production purposes on said lands.

SECTION 2. From the date of this Agreement until the first day of January 1934, as part of the price for oil purchased hereunder, the Refining Company will drill, case, and maintain all wells, find and supply water, install and operate pumps when necessary, clean, shoot, and otherwise stimulate production of wells as necessary, and conduct all development and production operations upon said lands necessary or proper for the protection and conservation of the oil and gas contained therein and for the production of oil thereform in such amounts and from such wells as will prevent the drainage of the oil content of said lands through wells belonging to other operators, and will, at all times, during said term, maintain the development of and production from said lands at such rate that the production of oil
151 therefrom shall be proportionate to the production of oil in other parts of the Salt Creek Field. (The term Salt Creek Field as herein used shall not be deemed to include the lands contained within Naval Reserve No. 3.)

ARTICLE III

The parties hereto mutually agree as follows:

SECTION 1. Separate settlements between each of the Producing Companies and the Refining Company shall be made on or before the 20th day of each month in respect to all oil of the particular Producing Company produced during the calendar month preceding.

SECTION 2. The Refining Company will take delivery of the oil purchased hereunder at the outlet gates of the measuring tanks located at or near the wells on said lands. In the measurement of oil, there shall be allowed a deduction of three per cent (3%) for moisture and basic sludge, unless, at any time, the Refining Company shall establish a rule in the Salt Creek Field for a less deduction in the measurement of oil purchased from other producers, in which

event, such smaller deduction shall be applicable to the measurement of oil purchased hereunder. In the event the production from any well shall contain excessive quantities of water or be an emulsion of oil and water, then such production may be steamed for the separation of water and the oil shall be measured after steaming.

SECTION 3. It is understood that one of the tracts of land covered hereby, to-wit: Section Thirty-six (36) is subject to royalties in favor of the State of Wyoming, and that the other tracts of land are severally subject to various royalties in favor of others, and it is agreed that whenever the State of Wyoming, or any other royalty owner having the right to take his royalty in kind shall elect to exercise such right, then the royalty oil, with respect to which such right is exercised, shall not be subject to this purchase agreement, but shall be delivered by the Refining Company to such royalty owner in accordance with such directions as the royalty owner may rightfully give therefor, but the Refining Company shall have the right, if it and royalty owner can reach an agreement, to purchase any such royalty oil from the owner thereof on any terms mutually agreeable to them.

SECTION 4. The erection and maintenance of suitable flow lines, measuring tanks and gas traps for the separation and
152 collection of gas shall be included within the duties of the Refining Company in connection with the production of oil hereunder.

SECTION 5. The Producing Companies may at all times, maintain gaugers and inspectors upon their said lands, and shall be furnished by the Refining Company with monthly statements showing (a) total amount of oil produced from said lands, (b) the entire amount of oil being produced from the Salt Creek Field itemized as to the respective parcels of land from which said oil is produced, so far as such information is reasonably accessible to the Refining Company, (c) the number of barrels of gasoline and water white kerosene oil, respectively, sold by the Refining Company from its Casper, Wyoming, refinery, and the gross price received for each product.

SECTION 6. In the event the drilling, production, or conservation methods of the Refining Company shall not meet the approval of the Producing Company, then the Producing Companies shall select an engineer, who, together with an engineer selected by the Refining Company, and a third engineer to be selected by these two engineers, jointly, shall investigate and decide upon the method, policy, or practice to be followed by the Refining Company, and the Refining Company shall comply with such decision. The Producing Companies will furnish the Refining Company with copies of all leases, contracts, and written obligations pertaining to the operation of said lands, or any parts thereof, and the Refining Company shall conduct its operation in such manner as to comply with all conditions and provisions thereof, and if in doubt as to the scope or meaning of any such leases, contracts, or obligations, it shall, upon request, be advised in respect thereto by the counsel of the Producing Companies, and thereupon

the Refining Company shall faithfully perform the terms of all such contracts and leases. The Refining Company, however, shall not, except by mutual agreement, pay any royalties or charges which may be either now or hereafter fixed upon said lands.

SECTION 7. This Agreement shall terminate at noon on January 1, 1934, and the Producing Companies shall, thereupon, assume full control of all drilling and producing operations thereon. The Refining Company shall have the right, for a reasonable time thereafter,
153 to remove all warehouses, storage tanks, structures, and other equipment, but the Refining Company shall not remove any casing or flow lines from producing wells, or pumps, pumphouses or pumping plants connected with pumping wells or any water or gas lines used for domestic or producing purposes, or any other material, structures, or equipment, including measuring tanks connected with or necessary for the continued production from said lands, all of which shall, without further payment, thereupon become the property of the Producing Companies. It is expressly understood that the oil pipe line system including the gathering lines, field storage, pumping stations and equipment, telegraph and telephone lines, the main water trunk line from Salt Creek to the main distributing point in the field, and the casinghead gas system, including its collecting lines, the casinghead plants and the gasoline lines to Casper are and shall continue to be the property of the Refining Company, and that upon the termination of this Agreement, the Refining Company shall have the rights, without charge, to continue to operate the same so long as the Producing Companies shall hold said lands under their leases or any renewals or extensions thereof and that during such time, the Refining Company may occupy so much of said lands with its said structures and equipment as may be necessary for its operations. Such occupation of the Refining Company, however, shall not unreasonably interfere with the drilling of wells and production of oil from said land.

SECTION 8. In the event any of the leases under which the lands covered hereby are held should expire or terminate prior to January 1, 1934, and none of said Producing Companies should receive an extension, renewal, or new lease thereon, then upon such expiration or termination, this Agreement shall cease with respect to such particular tract or tracts of land and shall remain in full force and effect, as to the tracts of land remaining to the Producing Companies or any of them.

SECTION 9. Performance shall be excused by acts of God, public enemies, strikes, fires, elemental disturbances, failure of oil supply, unavoidable accidents, or causes beyond reasonable control, but subject to these causes only, if the Refining Company fails to comply with any of the conditions and sustain all obligations imposed upon it hereby, and such failure continues for a period of sixty days
154 after notice in writing to the Refining Company, then the Producing Companies may at once by joint action declare this contract forfeited and terminated, and may thereupon assume exclusive control of all operations upon the said premises, or at their option may

require the Refining Company to continue the operation, insisting upon full compliance by the Refining Company, and any acceptance by the Producing Companies of performance less favorable than that to which they are entitled will constitute in no way a waiver of their full rights under this Agreement. In the event of forfeiture of this Agreement, the Refining Company shall have the right to remove the property authorized to be removed under the preceding paragraph hereof.

SECTION 10. This contract shall bind and all its benefits shall accrue to the successors and assigns of both parties hereto.

In Witness Whereof The parties hereto have caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed the day and year first above written.

THE MIDWEST OIL COMPANY,
By A. D. AITKEN, *Vice President.*

Attest:

H. H. BROOKS, *Secretary.* [SEAL]

WYOMING OIL FIELDS COMPANY,
By A. D. AITKEN, *Vice President.*

Attest:

H. H. BROOKS, *Secretary.* [SEAL]

THE WYOMING ASSOCIATED OIL CORPORATION,
By JOHN T. BARNETT, *President,*
Parties of the First Part.

Attest:

J. L. WARREN, *Secretary.* [SEAL]

THE MIDWEST REFINING COMPANY,
By T. A. DINES, *President,*
Party of the Second Part.

Attest:

T. A. PEDLEY, *Secretary.* [SEAL]

7-3-23/7s

155 *Exhibit T-2*

AGREEMENT

This Agreement Made as of the first day of February, A. D. 1923, between the Wyoming Associated Oil Corporation, a corporation of the State of Delaware, party of the first part, hereinafter called the "Producing Company," and the Midwest Refining Company, a corporation of the State of Maine, party of the second part, hereinafter called the "Refining Company"; Witnesseth;

Whereas The Producing Company is the owner of certain Government Oil and Gas Leases or Permits issued under the Act of February 25, 1920, covering in the aggregate those certain lands in the Salt Creek Oil Field, Natrona County, Wyoming, more fully described and set out on Schedule A hereto attached and hereby made a part hereof;

ARTICLE I

Now, Therefore, In consideration of One Dollar ($1.00) and other good and valuable considerations to it in hand paid by the Refining Company, and of the agreements of the Refining Company hereinafter set forth, the said Producing Company hereby covenants and agrees as follows, to-wit:

SECTION 1. From the date of this contract until the first day of January 1934 the Producing Company will sell, exclusively, unto the Refining Company, all of its oil produced and saved from the above mentioned lands (except oil used on the lands for drilling, domestic, or production purposes) upon a sliding scale of prices fixed by calendar monthly periods as follows:

(A) When the average price received by the Refining Company for gasoline sold from its Casper, Wyoming, Refinery during any month is 18c per gallon and the average price received by it for water white kerosene oil from said refinery during such month is 7½c per gallon, then the price of crude oil sold and purchased during said month under this Agreement shall be the base price of $1.42½ per barrel of forty-two (42) gallons. If the average price so received for gasoline shall be more or less than 18c per gallon, then for each cent increase over or decrease under said sum of 18c there shall be added to or subtracted from said base price 5c per barrel, and if the average
156 price so received for water white kerosene oil shall be more or less than 7½c per gallon, then for each cent increase over or decrease under said sum of 7½c there shall be added to or subtracted from said base price the sum of 2½c per barrel. Increases or decreases of less than 1c in the price received for either gasoline or water white kerosene oil shall result in proportionate adjustments of price.

(B) On or before the First day of May 1925 the Producing Company shall have the right to notify the Refining Company in writing whether the Producing Company elects to accept for the period of three (3) years, beginning June 1, 1925, the price fixed as provided in subdivision A hereof, or to accept for said period a price fixed in the same manner, except for a variation in the price of crude oil of 7c per barrel for each variation of 1c in the average price per gallon received for gasoline, and a variation of 3½c per barrel for each variation of 1c in the average prices per gallon received for water white kerosene oil, and the Refining Company shall pay the Producing Company for crude oil in accordance with such election, or if no election is made, shall pay the Producing Company for crude oil in accordance with subdivision A hereof.

(C) On or before the First day of May 1928 the Producing Company shall have the right to notify the Refining Company in writing which of the two options as to price set out in subdivision B hereof it elects to accept, and the Refining Company shall pay for crude oil in accordance with such election for the period from June 1, 1928, to June 1, 1931, or if no such election is made, shall pay for crude oil in accordance with subdivision A hereof.

(D) On or before the First day of May 1931 said Producing Company shall have the right to notify the Refining Company, in writing, which of the two options as to price set out in subdivision B hereof it elects to accept, and the Refining Company shall pay for crude oil in accordance with such election for the period from June 1, 1931, to January 31, 1934, or if no such election is made, shall pay for crude oil in accordance with subdivision A hereof.

SECTION 2. From the date of this Agreement until the First day of January 1934 the Producing Company will give the Refining Company free use of all storage facilities, pipe lines, buildings, and
157 equipment owned by the Producing Company upon said lands and will also give, free of charge, so much of the oil and gas produced as may be reasonably necessary for drilling, domestice service, and production on said lands.

ARTICLE II

In Consideration of One Dollar ($1.00) and other good and valuable considerations to it in hand paid by the Producing Company, and of the agreements of the Producing Company hereinabove set forth, the Refining Company hereby covenants and agrees as follows, to-wit:

SECTION 1. From the date of this Agreement until the First day of January, 1934, the Refining Company will purchase from the Producing Company currently as produced all of the oil of the Producing Company produced and saved from said lands, excepting only oil reasonably used on the land in connection with drilling, domestic, or production purposes on said land at the price or prices fixed by the provisions of Section 1 of Article I hereof.

SECTION 2. From the date of this Agreement until the First day of January, 1934, as part of the price for oil purchased hereunder, the Refining Company will drill, case, and maintain all wells, find and supply water, install and operate pumps when necessary, clean, shoot, and otherwise stimulate production of wells as necessary, and conduct all development and production operations upon said lands necessary or proper for the protection and conservation of the oil and gas contained therein and for the production of oil therefrom in such amounts and from such wells as will prevent the drainage of the oil content of said lands through wells belonging to other operators, and will, at all times during said term, maintain the development of and production from said lands at such rate that the production of oil therefrom shall be proportionate to the production of oil in other parts of the Salt Creek Field. (The term Salt Creek Field as herein used shall not be deemed to include the lands contained within Naval Reserve No. 3.)

ARTICLE III

The parties hereto mutually agree as follows:

SECTION 1. Settlements for oil sold and purchased hereunder
158 shall be made on or before the 20th day of each month in respect to all oil produced during the calendar month preceding.

SECTION 2. The Refining Company will take delivery of the oil purchased hereunder at the outlet gates of the measuring tanks located at or near the wells on said lands. In the measurement of oil, there shall be allowed a deduction of three per cent (3%) for moisture and basic sludge, unless at any time the Refining Company shall establish a rule in the Salt Creek Field for a less deduction in the measurement of oil purchased from other producers, in which event such smaller deduction shall be applicable to the measurement of oil purchased hereunder. In the event the production from any well shall contain excessive quantities of water or be an emulsion of oil and water, then such production may be steamed for the separation of water and the oil shall be measured after steaming.

SECTION 3. It is understood that the lands covered hereby are all subject to royalties in favor of the United States, and that many tracts of land are also subject to royalties in favor of others, and it is agreed that whenever the United States or any other royalty owner having the right to take his royalty in kind shall elect to exercise such right, then the royalty oil with respect to which such rights are exercised shall not be subject to this purchase agreement, but shall be delivered by the Refining Company to such royalty owner in accordance with such directions as the royalty owner may rightfully give therefor, but the Refining Company shall have the right, if it and the royalty owner can reach an agreement, to purchase any such royalty oil from the owner thereof on any terms mutually agreeable to them.

SECTION 4. The election and maintenance of suitable flow lines, measuring tanks, and gas traps for the separation and collection of gas shall be included within the duties of the Refining Company in connection with the production of oil hereunder.

SECTION 5. The Producing Company may at all times maintain gaugers and inspectors upon its said lands, and shall be furnished by the Refining Company with monthly statements showing (a) total amount of oil produced from said lands, (b) the entire amount of oil being produced from the Salt Creek Field itemized as to the
159 respective parcels of land from which said oil is produced, so far as such information is reasonably accessible to the Refining Company; (c) the number of barrels of gasoline and water white kerosene oil, respectively, sold by the Refining Company from its Casper, Wyoming, Refinery, and the gross price received for each product.

SECTION 6. In the event the drilling, production, or conservation methods of the Refining Company shall not meet the approval of the Producing Company, then the Producing Company shall select an engineer, who, together with an engineer selected by the Refining Company, and a third engineer to be selected by these two engineers, jointly, shall investigate and decide upon the method, policy, or practice to be followed by the Refining Company, and the Refining Company shall comply with such decision. The Producing Company will furnish the Refining Company with copies of all leases, contracts, and written obligations pertaining to the operation of said lands or any parts thereof, and the Refining Company shall conduct its operation in such manner as to comply with all conditions and provisions thereof, and if in doubt as to the scope or meaning of any such leases, contracts, or obligations, it shall, upon request, be advised in respect thereto by the counsel of the Producing Company, and thereupon the Refining Company shall faithfully perform the terms of all such contracts and leases. The Refining Company, however, shall not, except by mutual agreement, pay any royalties or charges which may be either now or hereafter fixed upon said lands.

SECTION 7. This Agreement shall terminate at noon on January 1, 1934, and the Producing Company shall thereupon assume full control of all drilling and producing operations thereon. The Refining Company shall have the right for a reaso'able time thereafter to remove all warehouses, storage tanks, structures, and other equipment, but the Refining Company shall not remove any casing or flow lines from producing wells, or pumps, pumphouses, or pumping plants connected with pumping wells, or any water or gas lines used for domestic or producing purposes, or any other material, structures, or equipment, including measuring tanks connected with or necessary for the continued production from said lands, all of which shall, without further payment, thereupon become the property of the Producing Company. It is expressly understood that the oil
160 pipe line system, including the gathering lines, field storage, pumping stations and equipment, telegraph and telephone lines, the main water trunk line from Salt Creek to the main distributing point in the field, and the casinghead gas system, including its collecting lines, the casinghead plants and the gasoline lines to Casper are and shall continue to be the property of the Refining Company, and that upon the termination of this Agreement, the Refining Company shall have the rights, without charge, to continue to operate the same so long as the Producing Company shall hold said lands under their lease or any renewals or extensions thereof, and that during such time the Refining Company may occupy so much of said lands with its said structures and equipment as may be necessary for its operations. Such operation of the Refining Company, however, shall not unreasonably interfere with the drilling of wells and production of oil from said land.

SECTION 8. Performance shall be excused by acts of God, public enemies, strikes, fires, elemental disturbances, failure of oil supply

unavoidable accidents, or causes beyond reasonable control, but subject to these causes only, if the Refining Company fails to comply with any of the conditions and sustain all obligations imposed upon it hereby, and such failure continues for a period of sixty days after notice in writing to the Refining Company, then the Producing Company may at once by its option declare this contract forfeited and terminated, and may thereupon assume exclusive control of all operations upon the said premises, or at its option may require the Refining Company to continue the operation, insisting upon full compliance by the Refining Company, and any acceptance by the Producing Company of performance less favorable than that to which it is entitled will in no way constitute a waiver of its full rights under this Agreement. In the event of forfeiture of this Agreement, the Refining Company shall have the right to remove the property authorized to be removed under the preceding paragraph hereof.

SECTION 9. This sales contract shall be construed in connection with the provisions of the Act of Congress of February 25, 1920, commonly known as the Lansing Act, and shall not be deemed to authorize any practice or operation upon or affecting the lands covered hereby in conflict with said Act or in conflict with the leases under which
161 said lands are held or the rules and regulations of the Department of the Interior applicable thereto.

SECTION 10. This contract shall bind and all its benefits shall accrue to the successors and assigns of both parties hereto.

In Witness Whereof The parties hereto have caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed the day and year first above written.

[CORPORATE SEAL] THE WYOMING ASSOCIATED OIL CORPORATION,
(Sgd.) By JOHN T. BARNETT, *President.*

Attest:

(Sgd.) J. L. WARREN, *Secretary.*

[CORPORATE SEAL] THE MIDWEST REFINING COMPANY,
By T. A. DINES, *President.*

Attest:

(Sgd.) T. A. PEDLEY, *Secretary.*

Schedule A—Group A

The Northwest Quarter of the Northwest Quarter (NW¼NW¼), the South Half of the Northwest Quarter (S½NW¼), the Northwest Quarter of the Southeast Quarter (NW¼SE¼), the South Half of the Southeast Quarter (S½SE¼) and the Southwest Quarter (SW¼) of Section Fourteen (14);

The Northeast Quarter (NE¼), and the East Half of the Northeast Quarter of the Southeast Quarter (E½NE¼SE¼) of Section Fifteen (15);

The South Half of the Southeast Quarter (S½SE¼) of Section Twenty-two (22);

The East Half of the Northeast Quarter (E½NE¼), the Northeast Quarter of the Southeast Quarter (NE¼SE¼), the Southwest Quarter of the Southeast Quarter (SW¼SE¼), and the South Half of the Southwest Quarter (S½SW¼) of Section Twenty-three (23);

The North Half (N½), the North Half of the Southeast Quarter (N½SE¼) and the North Half of the Southwest Quarter (N½SW¼) of Section Twenty-four (24);

162 The South Half of the Southwest Quarter (S½SW¼) of Section Twenty-five (25);

The Northwest Quarter (NW¼), the West Half of the Northeast Quarter (W½NE¼), the South Half of the Southeast Quarter (S½SE¼), and the South Half of the Southwest Quarter (S½SW¼) of Sectio Twenty-six (26);

The North Half of the Northeast Quarter (N½NE¼) of Section Twenty-seven (27);

The South Half of the Northwest Quarter (S½NW¼), the South Half of the Northeast Quarter (S½NE¼), the North Half of the Southeast Quarter (N½SE¼) and the North Half of the Southwest Quarter of the Southeast Quarter (N½SW¼SE¼) of Section Thirty-four (34);

The Northwest Quarter (NW¼) and the Southeast Quarter (SE¼) of Section Thirty-five (35);

All of said land described in Group A being in Township Forty (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian, in Natrona County, Wyoming.

GROUP B

Lot Two (2) in the Northwest Quarter (NW¼) of Section Nineteen (19);

Lot One (1) and Lot Two (2) in the Northwest Quarter (NW¼), the West Half of the Southeast Quarter (W½SE¼), the East Half of the Southwest Quarter (E½SW¼), and Lot Three (3) and Lot Four (4) in the Southwest Quarter (SW¼) of Section Thirty (30);

All of said land described in Group B being in Township Forty (40) North, Range Seventy-eight (78) West of the Sixth Principal Meridian, in Natrona County, Wyoming.

GROUP C

Lot Four (4) in the Northwest Quarter (NW¼) and the South Half of the Northwest Quarter (S½NW¼) of Section One (1);

Lot One (1) and Lot Two (2) in the Northeast Quarter (NE¼), and the South Half of the Northeast Quarter (S½NE¼) of Section Two (2);

163 All of said land described in Group C being in Township Thirty-nine (39) North, Range Seventy-nine (79) West of the Sixth Principal Meridian, in Natrona County, Wyoming.

Exhibit U–1

Oil and Gas Operating Lease—Examined—MSC

This Indenture of Lease, Made and entered into this 19th day of April, A. D. 1923, by and between the State of Wyoming, through its State Board of Land Commissioners, the party of the first part, and The Midwest Oil Company, a corporation duly organized under the laws of the State of Arizona, party of the second part.

1. Witnesseth: That the said party of the first part for and in consideration of the payment of an annual rental of Two Hundred Fifty Dollars ($250.00), to be applied upon a royalty hereinafter specified and agreed to, and payment of which shall be made as hereinafter provided, doth hereby lease unto the said party of the second part, its successors and assigns, the following described land, to-wit:

All of Section Thirty-six (36), Township Forty (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian, containing 640 acres, more or less, in Natrona County, Wyoming.

for the purpose of drilling, boring, operating for and producing therefrom mineral oil and gas, with the right and privilege of using so much of the surface of said land as may be necessary for rights of way over said premises for pipes, pipe lines, roads, trails, flumes, ditches, and right to use and place on said premises oil and water tanks, machinery, derricks, buildings, and telephone lines necessarily used in connection with the development and operation under this lease and for all purposes connected with the business or work that may be carried on by reason of, or in pursuance of, the rights and privileges granted by this lease.

2. To Have and to Hold the said above-described premises with the appurtenances unto the said party of the second part, its successors and assigns, for the term of five years beginning on the first day of October, A. D. 1924.

164 3. The said party of the second part in consideration of the issuance of this lease on the premises aforesaid by the said party of the first part to the said party of the second part, covenants and agrees to and with the said party of the first part to pay a minimum annual rental unto the State of Wyoming, payable in advance annually at the office of the Commissioner of Public Lands of said State of the sum of Two Hundred Fifty Dollars ($250.00) to apply on a royalty hereinafter specified and agreed to.

4. The said party of the second part as a consideration for the granting of this lease agrees to pay unto the State of Wyoming at the office of the Commissioner of Public Lands as a royalty on the production of gas from said premises sixty-five per cent (65%) of all gas produced and marketed, at the field market price in the Salt Creek Field, and as royalty on the production of crude oil from said premises sixty-five per cent (65%) of all oil produced, or, at the option of

the party of the first part, the said party of the second part agrees to deliver to the said party of the first part or such individual or corporation as may be designated from time to time in writing by said first party, at the mouth of the wells on said land as a royalty on the production of oil and of gas from said premises sixty-five per cent (65%) of the gas so produced and sixty-five per cent (65%) of the oil so produced. The delivery of said royalty oil due under this lease to the said party of the first part is to be made to the Mutual Oil Company on and after October 1, 1924, up and until the 30th day of April, A. D. 1926, on and after which date the said party of the second part agrees to deliver the royalty oil to the said party of the first part or such individual or corporation as may be designated by said first party.

5. The said party of the second part agrees to drill sufficient wells to the various sands to keep the production of oil and gas on said land up to the maximum consistent with a reasonable conservation policy, which policy shall be agreed upon once a year during the life of this lease between the parties hereto, but nothing herein is to be construed into meaning that the party of the first part agrees to any other development policy than that which is hereinbefore mentioned, between the parties hereto, such agreement to be entered into by both parties hereto annually on the first of October of each year during the
165 term of this lease. The said party of the second part agrees to drill a sufficient number of wells on the premises described herein to offset producing wells, by whomsoever drilled, upon adjoining, contiguous premises, such competing wells to be drilled within such distance of competing wells upon adjoining and contiguous premises and to the same oil sands penetrated by such competitive wells as to fully accomplish the offsetting of said competitive wells; said wells shall be driven to such depth as will penetrate the oil bearing sands penetrated by wells in operation on adjoining lands.

6. Said party of the second part further covenants and agrees that it shall and will, in a good and workmanlike manner, cause to be effectually shut off any water which may enter any abandoned wells that may be drilled by it on said leased premises and will also use every effort to shut off any water which may enter producing wells drilled by it on said leased premises, and will make due and proper effort by the customary and improved methods to prevent water from infiltrating said oil territory or any part thereof.

7. The said party of the second part further agrees to make payment of the royalties hereinbefore provided to the Commissioner of Public Lands on or before the twentieth day of each month for all of the gas produced and sold during the preceding calendar month. The said party of the second part further agrees to make delivery of the royalties in kind hereinbefore provided to the Mutual Oil Company as the representatives of the party of the first part for all the oil produced and sold from time to time during the month the same is produced up and until the 30th day of April A. D. 1926, on and after which date the said party of the second part agrees to make such

delivery to the said party of the first part or such individual or corporation as may be designated by said first party.

8. The said party of the second part further covenants and agrees that all wells will be drilled, cleaned, and when necessary shot, and will be so operated as to produce at all times such production of oil as is consistent with the safety of said wells and in accordance with the provisions of Section 5 hereof. Provided, however, that if fire or other unavoidable casualty shall destroy the refinery or storage tanks used in connection with handling the oil and gas produced from the land described, or if for any other good and sufficient reason the
166 said party of the second part shall not be able to deliver said oil or gas from said land, then and in that event the said party of the second part shall have the right to apply to the said party of the first part for a reduction of the production of oil and gas from the land described herein to such an extent and for such period of time as the conditions may warrant.

9. Said party of the second part further covenants and agrees that no casing shall be removed from any of the wells heretofore drilled or which may hereafter be drilled on the land described except with the approval and consent of the said party of the first part and that upon the abandonment of cessation of use of any well on the said described land, the said party of the second part will securely plug such well in conformity with the provisions of the laws of the State of Wyoming and will notify the Commissioner of Public Lands in writing of such abandonment, cessation of use, and plugging of well and the date thereof. Should the said party of the second part decide that it would be to the mutual benefit of both parties to this lease to deepen any exising well or any well that may hereafter be drilled on this lease to the present producing sand to what is known as the lower sand or sands, as the case may be, the contemplated deepening of said well or wells shall not be undertaken without the consent of the said party of the first part.

10. The said party of the second part further covenants and agrees that in the drilling and operation of wells on the land described, it will exercise the greatest care and diligence to prevent the flow of water into the oil-producing sands, to prevent the escape of gas and to protect and conserve the oil and gas from waste and destruction.

11. The said party of the second part further covenants and agrees to keep all of the oil and gas produced from the land described herein under the terms of this lease entirely separate and apart from any other oil or gas until the same has been gauged or measured; that it will accurately measure all the oil and gas produced under the terms of this lease and keep a record of such production separate and distinct from the record of production of oil and gas from other lands; and it is understood and agreed by and between the parties hereto that the said party of the first part, through its Commissioner of Public Lands, or its duly authorized agent or agents, shall have the right to measure such oil and gas or observe the measurements
167 made by the said party of the second part, and shall have the

right to examine the books and records of said party of the second part pertaining to the production of oil and gas from the land described in this lease, and shall at all times during the term of this lease have a right to go upon the said premises and into every part thereof for the purpose of inspecting the same and of examining the books or accounts and records of workings and production thereon and of ascertaining whether or not the said party of the second part, or any person or corporation holding or operating under, by or from it, is carrying out the terms, covenants, and agreements in this lease contained, and the said party of the second part agrees to render to the agent or agents of the said party of the first part as aforesaid every assistance under the provisions of this clause.

12. The said party of the second part further covenants and agrees that on or before the twentieth day of each month it will send to the Commissioner of Public Lands, accompanied by the remittance of the royalty on gas as provided herein, a written statement verified under oath by its duly authorized officer or agent, showing the total production in barrels of oil, and cubic feet of gas, and any other production, under the terms of this lease for the preceeding calendar month, itemizing the production from the different wells as nearly as possible and attaching to said sworn return a copy of the schedule or schedules of runs of oil.

13. The said party of the second part shall keep a correct log of each well drilled under the terms of this lease, showing the important formations passed through, the depth at which each formation was reached, the thickness of each formation, the water bearing formations, and the character of the water therein, the elevation to which the water rises, the number of feet of casing set in such well and where placed, its size and the total depth to which such well was drilled, and shall file a progress report on such well in the office of the Commissioner of Public Lands at the end of each period of sixty days while any such well is being drilled, and shall, within thirty days after the completion or abandonment of each well, file a copy of the entire log of such well, sworn to by the person who made such log, in the office of the Commissioner of Public Lands.

14. The said party of the second part further agrees that it
168 shall and will fully pay, when they fall due, all bills for machinery, lumber, timber, and other materials, all wages for labor, and all other demands caused by its operations hereunder on said demised lands, so that no laborers' or mechanics' liens, attachments, or liens of any character shall arise against said demised land, and said party of the second part covenants and agrees that no mechanics' liens or other liens shall ever attach thereto, and said party of the second part further covenants and agrees to bear, pay, and discharge in addition to the said royalties to be paid said party of the first part on said leased and demised land, all state and county taxes which may be lawfully taxed, levied, or imposed upon the personal property on said premises.

15. It is expressly understood and agreed by and between the said party of the first part and the said party of the second part that if the payments hereinbefore provided for or any part thereof shall be behind or unpaid on the date whereon the same should be paid as aforesaid, or if default shall be made in any of the covenants or agreements herein contained to be kept and performed by the said party of the second part, its successors or assigns, the said party of the first part, through its Commissioners of Public Lands, shall serve notice in writing on the said party of the second part, either by personal service or by registered mail of such default, and if the said party of the second part shall fail to perform the covenants and agreements of this lease so defaulted in within thirty days from the date said notice is served personally, or from the date said notice is mailed by registered mail, then the said party of the first part may declare the term of this lease ended and terminated and may cancel the same and re-enter into the said premises or any part thereof; and in case of default in and of any of the covenants or agreements herein contained by the said party of the second part upon thirty days notice by the said party of the first part to the said party of the second part that the term of this lease has been declared ended and the lease terminated and canceled as aforesaid, the said party of the second part hereby agrees to surrender the peaceful and uninterrupted possession of the said premises to the said party of the first part; and that neither the said party of the second part nor its legal representatives, nor assigns, will permit any loss, or permit or cause to be permitted any waste or destruction in, to or upon said premises
169 or any part thereof, or the minerals therein, nor remove any improvements placed thereon without the consent of the said party of the first part.

16. It is expressly understood and agreed by and between the said party of the first part and the said party of the second part that no assignment of this lease shall be made by the said party of the second part except with the consent and approval of the said party of the first part.

17. It is expressly understood and agreed by and between the said party of the first part and the said party of the second part that this lease is to be construed under the provisions of the laws of the State of ject to the granting of rights of way under the provisions of Sections 745 and 4954 of the Wyoming Compiled Statutes of 1920, but all rights of way granted shall be upon condition that the use thereof or structures to be erected thereon shall be of such a character as not to interfere with the operations and improvements of the said party of the second part which are being made, carried on, or in existence, under the terms of this lease at the time of the granting of such rights of way.

18. It is expressly understood and agreed by and between the said party of the first part and the said party of the second part that this lease is to be construed under the provisions of the laws of the State of

Wyoming; and in case at the expiration of this lease by limitation, forfeiture, or otherwise, the said land is leased to another party than the said party of the second part, the lessee herein, then and in that event the improvements placed on said land under the terms of this lease will be controlled as provided in Section 718 of the Compiled Statutes of Wyoming of 1920.

19. It is expressly understood and agreed by and between the said party of the first part and the said party of the second part that all oil or gas, or other minerals or by-products thereof extracted, produced, or removed under the provisions of this lease during the term thereof, and from the land described herein, shall be refined, manufactured, reduced, or otherwise treated preparatory to furnishing for market and sale wholly and entirely within the State of Wyoming, and that no refining manufacturing, reduction, or other treatment of such minerals or by-products shall be done or performed outside of the State of Wyoming.

170 20. Said party of the second part, as a consideration for the granting of this lease and to secure to the said party of the first part full compliance with all of the covenants, terms, and conditions thereof, hereby agrees to furnish and furnishes coordinate with the execution of this lease and as a part thereof, a bond as required by Section 720, Wyoming Compiled Statutes of 1920, in the penal sum of Seventy-five Thousand Dollars ($75,000) by a responsible bonding company authorized to transact business in the State of Wyoming, the said bond shall be approved by the said party of the first part.

In Witness Whereof, The said party of the first part has caused these presents to be signed by its President and countersigned by its Secretary, and its seal affixed, and the said party of the second part has caused this instrument to be executed by its duly authorized officers, and its seal affixed.

[SEAL] (Signed) WILLIAM B. ROSS,
President, State Board of Land Commissioners.

Countersigned:

(Signed) C. N. MCWHINNIE,
Commissioner of Public Lands.

THE MIDWEST OIL COMPANY,

[SEAL] (Signed) By A. D. AITKEN, *Vice-President,*

Signed by Vice-President in presence of
(Signed) HAROLD D. ROBERTS.

Attest:

(Signed) H. H. BROOKS, *Secretary.*

Signed by Secretary in presence of
(Signed) HAROLD D. ROBERTS.

Recording Fee $10.00 entered May 17, 1923. Receipt No. —.

Exhibit U–2

OIL AND GAS LEASE

This Indenture of Lease, made and entered into this 1st day of October, A. D. 1919, by and between The State of Wyoming, through its State Board of School Land Commissioners, party of the first part, and Midwest Oil Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona, party of the second part, Witnesseth:

171 1. That the said party of the first part, for and in consideration of the royalty hereinafter specified and agreed to, the payment of which shall be made as hereinafter provided, does hereby lease unto the said party of the second part, its successors and assigns, the following described land, to-wit: All of Section Thirty-six (36), Township Forty (40) North, Range Seventy-nine (79) West of the Sixth Principal Meridian, containing 640 acres, more or less, in Natrona County, Wyoming, for the purpose of drilling, boring, operating for and producing therefrom mineral oil and gas, with the right and privilege of using so much of the surface of said land as may be necessary for rights of way over said premises for pipes, pipelines, roads, trails, flumes, ditches, and right to use and place on said premises oil and water tanks, machinery, derricks, buildings, and telephone lines necessarily used in connection with the development and operation under this lease and for all purposes connected with the business or work that may be carried on by reason of, or in pursuance of the rights and privileges granted by this lease.

2. To Have and to Hold the said above-described premises with the appurtenances, unto the said party of the second part, its successors and assigns, for the term of five (5) years from the first day of October, A. D. 1919.

3. The said party of the second part, as a consideration for the granting of this lease, agrees to pay unto the State of Wyoming, at the office of the Commissioner of Public Lands as a royalty on the oil and gas produced and saved from said described land thirty-three and one-third (33⅓%) per cent of the market value at the mouth of the wells thereon of the crude oil, the minimum value to be not less than One Dollar and Fifty Cents ($1.50) per barrel and thirty-three and one-third (33⅓%) per cent of the market value of the wet gas produced and used or sold, the minimum value to be not less than Seven Cents ($.07) per thousand cubic feet, or at the option of the said party of the first part the said party of the second part agrees to deliver to the said party of the first part or such individual or corporation as may be designated in writing by said party of the first part, at the mouth of the wells on said land, as a royalty on the production of oil and gas from said land thirty-three and one-third (33⅓%) per cent of the oil and gas produced therefrom.

172 As a further consideration for the granting of this lease, the said party of the second part agrees to secure and maintain the maximum production of oil and gas from the land embraced herein and to operate the wells drilled and to be drilled under the provisions of this lease to their fullest capacity at all times during the term of this lease.

The party of the second part warrants and guarantees that the income of the State of Wyoming from the sale of the royalty oil and gas reserved hereunder, providing the same is sold at not less than the field market price, shall be not less than Fifteen Thousand ($15,000.00) Dollars per month during the first year of the term of this lease and not less than Twenty-five Thousand ($25,000.00) Dollars per month during the balance of said term, and does covenant and agree that if the income of the State from such source shall in any month be less than the amount above specified, it will within ten days after notice thereof from the Commissioner of Public Lands, pay to him an amount sufficient to make up such deficit.

4. As a further consideration for the granting of this lease the said party of the second part agrees to commence within thirty days from the date hereof the drilling of two wells to the oil-bearing sand locally known as the Second Wall Creek Sand, and thereafter to prosecute the said work diligently and continuously until the said wells shall be completed, and thereafter to keep two drilling rigs continuously at work upon said land, drilling additional wells to the Second Wall Creek Sand until the average daily production of oil from said land for a continuous period of one month shall equal or exceed thirty-five hundred barrels; and the party of the second part further covenants and agrees that in each year of the term of this lease after said production has been attained it will drill upon said land a sufficient number of wells to the Second Wall Creek Sand to maintain an average daily production from said land of thirty-five hundred barrels; provided, that the party of the second part shall not in any year after the first year of the term of this lease, be required to drill more than five wells to said sand; and the party of the second part further agrees to drill on the premises described herein additional wells of a sufficient number to offset producing wells, by whomsoever drilled, upon adjoining, contiguous premises, such competing wells to be drilled within such a distance of competing wells upon adjoining and contiguous
173 premises and to the same oil sands penetrated by such competitive wells as to fully accomplish the offsetting of said competitive wells; all wells shall be driven to such a depth as will penetrate the oil bearing sands penetrated by wells in operation on adjoining lands, and all wells shall be so drilled, cleaned, and if necessary, shot, and shall be so operated as to produce the greatest production of oil possible, consistent with the safety of said wells; provided, however, that if fire, or other unavoidable casualty shall destroy the refinery or storage tanks used in connection with the handling of the products from the land described, or if for any other reason the lessee shall not

be able to market the oil from said land, then, upon a proper and satisfactory showing to the State Board of School Land Commissioners by the party of the second part of its inability to handle and care for the product from the land herein described, the State Board of School Land Commissioners may authorize the reduction of the production of oil from the land described herein, to such extent and for such time as the facts and conditions shall warrant. In the drilling of the additional wells to the Second Wall Creek Sand provided for herein, and to secure the fullest drainage and production of oil from said sand, the said party of the second part further agrees to drill two out of each three of said wells along the entire outer or exterior boundaries of the land embraced herein before drilling any wells in the exterior of said land.

5. The said party of the second part shall keep a correct log of each well drilled under the terms of this lease, showing the important formations passed through, the depths at which each formation was reached, the thickness of each formation, the water-bearing formations and the character of the water therein, the elevation to which the water rises, the number of feet of casing set in such well and where placed, its size, and the total depth to which such well was drilled and shall, within thirty days after the completion of each well, file a copy of said log, sworn to by the person who made the log, in the office of the Commissioner of Public Lands.

6. It is further agreed by the said party of the second part that no casing shall be removed from any of the wells heretofore drilled, or which may be hereafter drilled on the land described, without the consent of the party of the first part; and that upon the abandonment or the cessation of use of any well on the said described
174 lands, said party of the second part shall securely plug such well, in conformance with the provisions of the laws of the State of Wyoming, and shall notify the Commissioner of Public Lands in writing of the date of such abandonment or cessation of use and plugging of well within thirty days from date thereof.

7. It it specifically agreed by the party of the second part that in the drilling and operation of wells on the land described, it will exercise the greatest care and diligence to prevent the flow of water into the oil sands, to prevent the escape of gas, and to protect and conserve the oil from waste.

8. The said party of the second part agrees to keep the oil produced from the said land described herein entirely separate from any other oil until the same has been gauged or measured, that it will accurately measure the oil produced under the term of this lease and keep a record of such production separate and distinct from the records of production of oil from other lands; and it is understood and agreed by and between the parties hereto that the party of the first part, through its Commissioner of Public Lands, or any other duly authorized agent, or agents, shall have the right to measure such oil or observe the measurements made by the party of the second part, and

shall have the right to examine the books and records of said party of the second part pertaining to the production of oil from the land described in this lease, and shall at all times during the term of this lease have a right to go upon the said premises and into every part thereof for the purpose of inspecting the same and of examining the books of accounts and records of workings thereon; and of ascertaining whether or not the lessee, or any party holding thereunder, by or from said lessee, is carrying out the terms, covenants, and agreements in this lease contained; and the party of the second part agrees to render to the agent of the party of the first part every assistance in his operations under the provisions of this clause.

9. The said party of the second part agrees that on or before the twentieth day of each calendar month, it will send to the Commissioner of Public Lands for the State of Wyoming, with the remittance of the royalty herein provided for, a statement verified under oath by one of its responsible officers showing the daily production in barrels of oil and the total production for the month, and the daily production in cubic feet of gas and the total production for the
175 month, under the terms of this lease, for the preceding month and attach to said production statement copies of the schedules of runs of oil.

10. It is expressly understood and agreed by and between the said party of the first part and the said party of the second part that this lease is to be construed under the provisions of the laws of the State of Wyoming; and in case at the expiration of this lease by limitation, forfeiture, or otherwise, the said lands are leased to another party than the said party of the second part, the lessee herein, then and in that event the improvements placed on said land under the terms of this lease will be controlled as provided in Section 622 of the Compiled Statutes of Wyoming of 1910, as amended and re-enacted by Chapter 80 of the Session Laws of 1915.

11. It is expressly understood and agreed by and between the parties hereto, that if the payments hereinbefore provided for, or any part thereof, shall be behind or unpaid on the day whereon the same should be paid as aforesaid, or if default shall be made in any of the covenants or agreements herein contained to be kept and performed by the said party of the second part, its successors or assigns, the said party of the first part shall serve notice on the party of the second part, either by personal service or by registered letter, of such default; and if the party of the second part shall fail to perform the covenants of this lease defaulted in within 30 days from the date said notice is served, or from the date said notice is mailed, then the said party of the first part may declare the term of this lease ended and terminated and cancel the same and re-enter into the said premises, or any part thereof; in case of default in and of any of the covenants herein contained, by the party of the second part, upon thirty days' notice by the party of the first part to the party of the

second part that the term of this lease has been declared ended and the lease terminated and cancelled, the said party of the second part agrees to surrender the peaceful possession of the premises to the party of the first part; and that neither the party of the second part nor its legal representatives or assigns, will permit any loss, or permit or cause to be permitted any waste or destruction in, to, or upon said premises or any part thereof, or remove any improvements placed thereon, without the consent of the party of the first part.

176 12. It is understood and agreed by and between the parties hereto that no assignment of this lease shall be made by the party of the second part except with the consent and approval of the party of the first part.

13. It is expressly understood and agreed by and between the said party of the first part and the said party of the second part that this lease is made subject to all legally established rights of way and subject to the granting of rights of way under the provisions of Sections 649 and 3890 of the Wyoming Compiled Statutes of 1910, but all rights of way granted shall be upon condition that the use thereof or structures erected thereon shall be of such character as not to interfere with the operations and improvements of said party of the second part which are being had, carried on, or in existence under the terms of this lease at the time of the granting of such rights of way.

14. It is further mutually agreed that the execution of this lease by the party of the second part shall constitute a surrender of the lease upon said land from the State of Wyoming to the party of the second part dated December 31, 1914, which surrender is hereby accepted by the party of the first part; provided, that with respect to all production from said land and operations thereon prior to October 1, 1919, the parties shall be bound by the covenants and provisions of said lease, and all rights accruing thereunder to the State of Wyoming may be enforced.

15. It is expressly understood and agreed by and between the said party of the first part and the said party of the second part that all oil or gas or other minerals or by-products thereof extracted, produced, or removed under the provisions of this lease during the term thereof and from the land described therein, shall be refined, manufactured, reduced, or otherwise treated preparatory to furnishing for market and sale, wholly and entirely within the State of Wyoming, and that no refining, manufacturing, reducing, or other treatment of such minerals or by-products shall be done or performed outside of the State of Wyoming.

In Witness Whereof, said party of the first part has caused these presents to be signed by its President and countersigned by the Commissioner of Public Lands, and its seal to be hereunto affixed,

177 and the said party of the second part has caused its corporate name to be hereunto subscribed by its President and attested

and its corporate seal affixed by its Secretary, the day and year first above written.

[SEAL] (Signed) ROBERT D. CAREY,
President State Board of School Land Commissioners.

Countersigned:
(Signed) A. BAKER,
Commissioner of Public Lands.

MIDWEST OIL COMPANY,
[SEAL] (Signed) By L. L. AITKEN, *President.*

Signed by Lessee in the present of E. Morrison.
(Signed) J. L. WARREN, *Secretary.*

Exhibit U–3

OIL OR MINERAL LEASE

This Indenture of Lease, Made and entered into this 26 day of December, A. D. 1914, by and between the State of Wyoming, through its State Board of School Land Commissioners, party of the first part, and the Midwest Oil Company, of the County of Denver, State of Colorado, a corporation organized under the laws of the State of Arizona and authorized to do business in the State of Wyoming, party of the second part,

(1) Witnesseth: That the said party of the first part for and in consideration of a monthly rental of Three Thousand Dollars ($3,000.00), to be applied upon a royalty hereinafter specified and agreed to and payment of which shall be made as hereinafter provided, does hereby lease unto the said party of the second part, its successors and assigns, all of Section Thirty-six (36), Township Forty (40) North, Range Seventy-nine (79) West, for the purpose of drilling, boring, operating for, developing and removing therefrom mineral oil, including all rights of prospecting for, developing and producing oil from said lands, with the right and privilege of using so much of the surface of said land as may be necessary for rights of way over
178 said premises for pipes, pipelines, roads, trails, flumes, ditches, and rights to use and place on said premises oil and water tanks, machinery, derricks, buildings, and telephone lines necessarily used in connection with the development and operations under this lease and for all purposes connected with the business or work that may be carried on by reason of or in pursuance of the rights and privileges granted by this lease.

(2) To Have and to Hold the said above-described premises with the appurtenances unto the said party of the second part, its successors and assigns, for the term of five (5) years from the beginning of the day of the 1st day of January A. D. 1915.

(3) The said party of the second part, in consideration of the issuance of this lease on the premises aforesaid by the said party of the first part to said party of the second part, does covenant and agree to

and with the said party of the first part to pay a minimum monthly rental unto the State of Wyoming, at the office of the Commissioner of Public Lands of said State, of the sum of Three Thousand Dollars ($3,000.00) to apply upon a royalty hereinafter specified and agreed to.

(4) The said party of the second part further agrees, in consideration of the granting of this lease, to pay unto the State of Wyoming, at the office of the Commissioner of Public Lands, as royalty on the production of oil from said described land, the sum of twelve and one-half cents (12½c) per barrel, of forty-two (42) gallons each, for all oil produced from said land, under the terms of this lease (less three per cent (3%) shrinkage for water and other foreign substances), which price and method of payment has been agreed upon between the parties hereto for convenience of operation under the conditions hereof and purchase of royalty oil as the equivalent of that royalty or proportion of the gross output of the mineral oil from the premises described herein which the laws of the State provide may be received by the State therefrom. If said royalty shall exceed in any month of the term of this lease the minimum monthly rental of Three Thousand Dollars ($3,000.00), then said minimum monthly rental of Three Thousand Dollars ($3,000.00) so paid for such month shall be applied upon the amount of royalty charged for that month; if the production be less than twenty-four thousand (24,000) barrels in any month, the royalty thereon shall apply upon the minimum payment of Three
179 Thousand Dollars ($3,000.00) for such month; payment of such monthly rental and royalty to be made on or before the 20th day of each month, for the oil produced during the preceding month.

(5) As a further consideration for the granting of this lease, the said party of the second part agrees to drill, upon the premises described herein, six (6) standard oil wells during each year of the first three (3) years of the running of this lease; the location of said wells to be agreed upon between the party of the second part and the Commissioner of Public Lands of Wyoming, and on that part or parts of said premises as have been, or shall be hereafter shown to best produce mineral oil; the first well to be started as soon after January 1st, 1915, as weather and water conditions will permit, and to be completed as soon as weather and water conditions will permit, and thereafter, one well at least shall be completed every sixty (60) days, provided weather and water conditions will permit, but however, a total of at least six (6) wells shall be drilled during each year of the first three (3) years of this lease; said wells shall be driven to such depth as will penetrate the oil-bearing sands now penetrated by other wells in operation on the land described herein, and such new wells shall be so drilled and, if necessary, shot, and such new wells and also the wells now in operation on said described land shall be so operated as to produce the greatest production of oil possible consistent with safety of said wells. Provided, however, that if fire or other unavoidable casualty shall destroy the refinery or storage tanks used in connection with the handling of the products from the land described, then, upon a proper and satisfactory showing to the State

Board of School Land Commissioners, by the party of the second part, of its inability to handle and care for the product from the land herein described, the State Board of School Land Commissioners shall authorize the reduction of the production of oil from the land described herein, to such an extent and for such a time as the facts and conditions shall warrant.

(6) Said party of the second part further agrees to drill a sufficient number of wells, on the premises described herein, to off-
180 set producing wells by whomsoever drilled upon adjoining, contiguous premises, such competing wells to be drilled within such a distance of competitive wells on adjoining and contiguous premises, and to the same oil sands penetrated by such competitive wells, as to fully accomplish the offsetting of said competitive wells, such wells to be part of the eighteen (18) wells required to be drilled as hereinabove provided.

(7) The said party of the second part shall keep a correct log of each well drilled under the terms of this lease, showing the important formations passed through, the depth at which each formation was reached, the thickness of each formation, the water bearing formations and the character of the water therein, the elevation to which the water rises, the number of feet of casing set in such well and where placed, its size and the total depth to which such well was drilled, and shall, within thirty (30) days after the completion of each well, file a copy of said log certified to by the person who made the log, in the office of the Commissioner of Public Lands.

(8) It is further agreed by the said party of the second part that no casing shall be removed from any of the wells heretofore drilled or which may be hereafter drilled on the land described, without the consent of the party of the first part; and that upon the abandonment or the cessation of the use of any well on the said described lands, said party of the second part shall securely plug such well, in conformance with the provisions of Chapter 46 of the Session Laws Wyoming 1913 and amendments which may be made thereto.

(9) It is specifically agreed by the party of the second part that in the drilling and operation of wells on the land described that it will exercise the greatest care and diligence to prevent the flow of water into the oil sands, to prevent the escape of gas, and to protect and conserve the oil from waste.

(10) It is further agreed by the party of the second part that if the production of oil from the land herein described shall fall below twenty-four thousand (24,000) barrels per month, that it will, at the request of the party of the first part, sink a well to test and prospect the oil sands below the sand from which the oil is now obtained.

(11) The said party of the second part agrees to keep the oil
181 produced from the land described herein entirely separate from any other oil until the same has been gauged or measured; that it will accurately measure the oil produced under the terms of this

lease and keep a record of such production separate and distinct from the records of production of oil from other lands; and it is understood and agreed by and between the parties hereto, that the party of the first part, through its Commissioner of Public Lands or any other duly authorized agent or agents, shall have the right to measure such oil or observe the measurements made by the party of the second part, and shall have the right to examine the books and records of said party of the second part pertaining to the production of oil from the land described in this lease, and shall at all times during the term of this lease have a right to go upon the said premises and into every part thereof for the purpose of inspecting the same and of examining the books of accounts and records of workings thereon, and of ascertaining whether or not the lessee or any party holding thereunder, by or from said lessee, is carrying out the terms, covenants, and agreements in this lease contained; and the party of the second part agrees to render to the agent of the party of the first part every assistance in his operations under the provisions of this clause.

(12) The party of the second part agrees that on or before the 20th day of each month, it will send to the Commissioner of Public Lands, with the remittance of the rental and royalty, a verified statement of the production of oil under the terms of this lease, for the preceding month, itemizing the production from the different wells as nearly as possible.

(13) It is hereby stipulated and agreed by and between the parties hereto, that at the expiration of this lease, in the event that the lands herein described shall be leased to a person or company other than the lessee herein, that such new lessee shall pay to the lessee herein the value of the improvements placed on said land, owned by the said lessee herein; the value of said improvements to be determined by agreement between the new lessee and the lessee herein, or if they cannot agree, then by appraisement under the direction of the State Board of School Land Commissioners. The word "improvements" is herein defined as being property placed on and in the land described herein, such as casing pipes, pipelines, pumps, pumping ma-
182 chinery, tanks, including measuring devices installed therein or attached thereto, derricks, boilers, powerhouses, power plants, engines, and machinery, and all other necessary appliances used in the development and operation of the lands leased hereunder, but shall not include the oil wells heretofore drilled on the land described herein or which may be hereafter drilled on said land under the provisions thereof; nothing in the definition of the word "improvements" as herein contained shall be construed as embracing pipelines which form a general part of the piping system of the party of the second part and pipelines which are not purely local to the ground leased. In the event that at the expiration of this lease the party of the first part shall not lease said property to the party of the second part, or to any one else, but shall retain the same, or in the event that

at the expiration of this lease the State shall sell said property to a person or company other than the lessee hereunder, then disposition of the improvement shall be made in like manner as hereinbefore in this paragraph provided for.

(14) It is expressly understood and agreed by and between the parties hereto, that if the payments hereinbefore provided for or any part thereof shall be behind or unpaid on the day whereon the same should be paid as aforesaid, or if default shall be made in any of the covenants or agreements herein contained to be kept and performed by the said party of the second part, its successors or assigns, or if this lease shall have been procured by fraud, deceit, or misrepresentation, the said party of the first part may declare the term of this lease ended and terminated and cancel the same and re-enter into the said premises or any part thereof. In case of default in and of any of the covenants herein contained, by the party of the second part, upon thirty (30) days' notice by the party of the first part to the party of the second part that the term of this lease has been declared ended and the lease terminated and canceled, the said party of the second part agrees to surrender the peaceful possession of the premises to the party of the first part.

(15) It is understood and agreed by and between the parties hereto that no assignment of this lease shall be made by the party of the second part except with the consent and approval of the party of the first part; and the party of the second part does further covenant and agree that at the expiration of the term of this lease, or its
183 cancelation or termination by default, as above provided, that the said party of the second part will yield up said premises unto the said party of the first part, and that neither the party of the second part or its legal representatives or its successors or assigns will permit any loss, or permit or cause to be permitted any waste, in, to, or upon said premises or any part thereof, or remove any improvements placed thereon, without the consent of the party of the first part.

(16) It is further understood and agreed that this lease is made subject to all legally established rights of way and subject to the granting of rights of way under the provisions of Chapter 85, Session Laws of 1905; but all rights of way granted shall be upon the condition that the use made thereof or structures to be erected thereon, shall be of such character as not to interfere with the operations and improvements of the party of the second part which are being had or are in existence at the time of the granting of such rights of way.

(17) It is hereby stipulated and agreed by and between the parties hereto, that should any laws of the State of Wyoming governing conditions in this lease contained, be changed or amended during the term of this lease, that this lease shall be subject to and construed under the terms and provisions of the law or laws as thus changed or amended; provided, however, that nothing in this clause shall be

construed as authorizing any increase of the present requirements or payments upon the party of the second part agreed to hereunder or diminish the term hereof.

(18) As for further consideration for the granting of this lease, the party of the second part hereby agrees to surrender to the State of Wyoming its lease to the lands herein described, dated January 4th, 1910, issued to William M. Fitzhugh and assigned by William M. Fitzhugh to the Midwest Oil Company, party of the second part; and it is hereby stipulated and agreed by the parties hereto that said lease and all the rights of the party of the second part thereunder shall cease and terminate at midnight of the night of December 31st, 1914.

In Witness Whereof, said party of the first part has caused these presents to be signed by its President and countersigned by the
184 Commissioner of Public Lands, and its seal to be hereunto affixed; and the said party of the second part has hereunto caused this instrument to be executed in its name, and on its behalf, and under its corporate seal, by its President and Secretary.

Done in the City of Cheyenne, State of Wyoming, this 26 day of December, A. D. 1914.

[SEAL] (Signed) JOSEPH M. CAREY,
President, State Board of School Land Commissioners.

Countersigned:

(Signed) S. G. HOPKINS, *Commissioner of Public Lands.*

THE MIDWEST OIL COMPANY,

[:5(-] (Signed) By J. L. WARREN, *President.*

Attest:

(Signed) A. L. HESS, *Secretary.*

Signed, sealed, and delivered by the Lessee, in the presence of:

(Signed) L. A. MILLER.

Exhibit U–4

OIL OR MINERAL LEASE

This Indenture, made and entered into this 4th day of January, A. D. 1910, by and between the State of Wyoming, through its State Board of School Land Commissioners, party of the first part, and Wm. M. Fitzhugh, of the County of Natrona, State of Wyoming, party of the second part.

Whereas, said party of the second part has made application for a mineral lease under the provision of Chapter 81, Session Laws of Wyoming, 1907, on Section 36, Township 40 North, Range 79 West, by bidding at public auction for a lease on said land.

Now, Therefore, This Indenture Witnesseth, that the said party of the first part, for and in consideration of the application aforesaid,

the representations therein made and the covenants and agreements hereinafter mentioned, to be kept and p'rformed by the said party of the second part, his legal representatives or assigns has demised and leased to the said party of the second part, the lands hereinbefore described for the purpose of prospecting for and producing oil.

185 To Have and to Hold the said above-described premises, with the appurtenances, unto the said party of the second part, his executors, legal representatives or assigns, for the term of five years from the 4th day of January, A. D. 1910.

And the said party of the second part, in consideration of the issuance of this oil lease on the premises aforesaid by the said party of the first part to the said party of the second part, does covenant and agree to and with the said party of the first part to pay annually unto the State of Wyoming, at the office of the Commissioners of Public Lands, the sum of Five Hundred Dollars to apply on a royalty of ten per cent of the gross amount of oil porduced from said section during the year for which payment is made.

It is expressly understood and agreed that the party of the second part shall, during each year of the term of this lease, expend in development work not less than one hundred dollars, and shall during the first six months of this lease, expend in development work, buildings or machinery not less than Five Thousand Dollars. Said party of the second part hereby agrees to submit sworn statements of any minerals extracted at the end of each and every three months from the first day of January 1910, accompanied with a remittance for any royalty due upon same, and to open his books to the inspection of an agent of the State for the purpose of verifying said statements if deemed necessary by said party of the first part; and it is further understood that if the said party of the second part, his successors or assigns, shall, during the term of this lease, construct suitable surface improvements, and install machinery and equipment sufficient for the purpose of carrying on the business of producing oil the said party of the second part shall have a preference right to renew said lease for further terms of five years each upon such terms as may be prescribed by the State Board of School Land Commissioners; and provided that the said lessee shall file with the Commissioner of Public Lands, on or before the first day of February of each year a sworn statement covering the year expiring December 31st, prior thereto, corroborated by two witnesses, showing that he has performed the required amount of work upon said land, and the party of the second part, for and in consideration of the execution of this lease, hereby agrees to make and render full, true, and correct statements of all oil produced

186 from said section during the periods herein described under the terms of this lease, and to file such statements in the office of the Commissioner of Public Lands on or before the first day of February of each year, covering the year expiring December 31st,

prior thereto, and further agree that such statements shall be subject to verification by examination of the books of said lessee.

It is expressly understood and agreed by and between the parties aforesaid that no assignment of this lease shall be made by the party of the second part except with the consent and approval of the party of the first part. And the said party of the second part does further covenant and agree to and with the said party of the first part that said second party at the expiration of the term, or the cancellation of this lease, will yield up said premises unto the said party of the first part, and that neither he, the said Wm. M. Fitzhugh, nor his legal representatives or assigns, will permit any loss, or commit or cause to be committed any waste in, to or upon said premises, or any part thereof.

It is expressly understood that this lease is made subject to all legally established rights of way and subject to the grant of rights of way under the provisions of Chapter 85, Session Laws 1905.

And it is expressly understood and agreed by and between the parties aforesaid that if the payments, hereinbefore reserved, or any part thereof, shall be behind and unpaid on the day whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants or agreements herein contained to be kept by the said party of the second part, his successors, administrators, or assigns, or if this lease shall have been procured by fraud, deceit, or misrepresentation, it shall and may be lawful for the said party of the first part to declare such term ended, cancel this lease, and into the said premises, or any part thereof, to re-enter.

In case of default in and of any of the covenants herein contained, upon thirty days' notice by the party of the first part to the party of the second part that the term has been declared ended, the said party of the second part agrees to surrender the peaceful possession of the premises to the party of the first part.

187 SPECIAL PROVISIONS

It is expressly understood and agreed by and between the State Board of School Land Commissioners and William M. Fitzhugh, that this lease is subject to cancellation at the option of the said Board, unless active drilling operations shall be begun on the land covered by this lease by the said William M. Fitzhugh, or his assigns, on or before April 1st, 1910, and continued without cessation until oil is developed to the satisfaction of the lessee and in quantities sufficient for commercial production, it being understood and agreed that at least $5,000.00 shall be expended in the installation of machinery and the construction of buildings and drilling operations upon the land prior to August 1st, 1910, it being mutually agreed that this lease may be surrendered and cancelled at the request of the lessee after

the first year, if continuous drilling does not develop oil sufficient for commercial production. It is further understood and agreed that if the conditions of this lease are fully carried out and complied with by the said lessee, that the said lessee or his approved assigns shall be entitled to a preference right to renew this lease under such terms as may be fixed by the Board, requiring the production of at least 30,000 barrels of oil per annum, or an amount to be mutually agreed upon which shall not be less than the proportionate amount produced and marketed from adjoining lands under lease in the same proportion as the area of the land heretofore described shall bear to the area of other tracts of contiguous land actively producing oil. It is further understood and agreed that the party of the second part shall at the option of the party of the first part purchase all the oil accruing to the party of the first part through its royalty of 10% of the gross amount produced at the price of not less than 50c per barrel. It is further understood and agreed that in lieu of the production and purchase of the oil accruing to the party of the first part, the party of the first part may require a large annual payment of advanced royalty and may fix a time for the termination of the lease by reason of the failure of the party of the second part to market the amount of oil, which, in the opinion of the said Board, should be produced from the land covered by this lease.

The annual payments of advance royalty shall be made at the times as follows, to-wit:

188 Less filling and recording fees $17.00	Month Day Year	Amount	By whom received for State Board of School Land Commissioners	Date
First Payment	January 4, 1910	$483	R. P. Fuller, per L. G.	Feb. 24, 1910
Second Payment	January 4, 1911	$500	R. P. Fuller, per L. E.	Dec. 30, 1910
Third Payment	January 4, 1912	$500	S. G. Hopkins (E. F.)	Dec. 30, 1911
Fourth Payment	January 4, 1913	$500	S. G. Hopkins, J. H.	Jan. 14, 1913
Fifth Payment	January 4, 1914	$500	S. G. Hopkins, E. F.	Jan. 19, 1914

In Witness Whereof said party of the first part hath caused these presents to be signed in duplicate by its President and countersigned by the Commissioner of Public Lands, and its seal to be hereunto affixed; and the party of the second part has hereunto set his hand and seal the day and year first above written.

BRYANT B. BROOKS,
President, State Board of School Land Commissioners.

[Seal of State Board of School Land Comm's, Wyo.]

Countersigned:

R. P. FULLER,
Commissioner of Public Lands.

Signed by Lessee in Presence of
JESSE E. WHALED.

WM. M. FITZHUGH.

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Exhibit V

AGREEMENT OF 2/1/23 WITH M. R. CO.

		Production (barrels)	Income rec'd at contract price by W. A. Oil Corp.	General and overhead expense of W. A. Oil Corp.	Net income of W. A. Oil Corp.	Field operating expense of Midwest Ref'g Co.
Group A:						
S½ SE and NW SE	14-40-79	135,796.12	135,539.63	4,161.22	131,378.41	81,194.78
SW	14	98,781.70	95,125.37	2,789.65	92,335.72	59,067.58
S½ NW and NW NW	14	118,250.94	114,497.97	3,439.89	110,998.08	70,709.43
NE	15	102,323.24	98,702.26	3,186.43	95,515.83	61,185.29
E½ NE SE	15	14,339.16	13,353.35	389.98	12,963.37	8,574.26
S½ SE	22	68,506.49	63,782.83	2,062.41	61,720.42	40,964.20
E½ NE	23	91,169.59	88,721.48	2,667.59	86,053.89	54,515.84
NE SE and SW SE	23	136,632.77	134,617.06	3,768.79	130,848.27	81,701.04
SE SW	23	37,503.14	36,621.43	1,347.63	35,273.80	22,425.41
SW SW	23	7,985.73	7,384.51	234.16	7,150.35	4,775.15
NE	24	265,292.75	252,879.64	9,285.07	243,594.57	158,634.67
N½ SE	24	205,316.57	206,301.56	6,009.98	200,291.58	122,771.36
N½ SW	24	36,533.10	33,933.86	1,162.04	32,771.82	21,845.36
NW	24	247,296.24	233,470.82	7,672.58	225,798.24	147,873.46
S½ SW	25	52,558.52	49,570.51	1,583.32	47,987.19	31,427.93
W½ NE	26	71,483.47	76,082.15	2,570.69	73,511.46	43,744.31
SE SE	26	36,364.15	48,121.09	1,240.27	46,880.82	21,744.34
SW SE	26	87,341.09	84,135.80	3,030.05	81,095.75	52,226.55
E½ NW	26	220,484.88	210,513.05	6,732.65	203,780.40	131,841.32
S½ SW	26	30,190.54	31,996.96	893.87	31,103.09	18,052.76
W½ NW	26	173,091.36	180,152.98	5,284.97	174,868.01	103,501.85
N½ NE	27	91,713.95	85,634.03	2,738.50	82,895.53	54,841.35
S½ NE	34	70,745.01	70,027.83	2,412.69	67,615.14	42,305.74
N½ SE and N½ SW SE	34	104,735.02	98,349.07	2,935.06	95,414.01	62,627.44
S½ NW	34	17,449.30	16,485.65	499.77	15,985.88	10,434.00
SE	35	250,060.14	235,860.20	8,027.33	227,832.87	149,526.16
NW	35	343,528.52	353,565.60	9,987.92	343,577.68	205,416.59
Group B:						
N½ SW NW	19-40-78	42,719.65	45,090.58	1,187.03	43,903.55	25,544.69
S½ SW NW	19	30,756.69	34,734.92	874.13	33,860.79	18,391.29
SW SE	30	48,025.40	54,529.08	1,406.03	53,123.05	28,717.31
NW SE	30	89,065.06	101,167.40	2,489.31	98,678.09	53,267.41
NE SW and S½ SW	30	130,253.76	143,253.66	3,825.83	139,427.83	77,886.64
NW SW	30	66,549.13	74,328.04	1,837.49	72,490.55	39,793.77
S½ SW NW	30	18,881.69	20,612.49	514.71	20,097.78	11,290.51
NW NW and N½ SW NW	30	128,030.94	145,444.36	3,849.18	141,595.18	76,557.48
Group C:						
S½ NW and NW NW	1-39-79	89,153.22	91,210.51	3,026.95	88,183.56	53,310.13
NE	2	229,964.08	235,620.37	7,937.51	227,682.86	137,509.49
Total Government Lands		3,988,863.11	4,001,358.10	123,072.68	3,878,285.42	2,385,183.78

AGREEMENT 2/1/23 WITH M. O. CO., W. O. F. CO., AND M. R. CO.

50% Undivided Interest:						
W½ 12, NW and N½ SW	13-40-79	224,933.33	224,078.74	6,440.37	217,638.37	134,501.31
S½ SW (Iba 80)	13-40-79	50,698.80	47,466.73	2,047.02	45,419.71	30,315.90
E½	25-40-79	341,172.60	322,567.96	11,053.15	311,514.81	204,007.84
Total Patented Lands		616,804.73	594,113.43	19,540.54	574,572.89	368,825.05
Total		4,605,667.84	4,595,471.53	142,613.22	4,452,858.31	2,754,008.83
SW NW	5-39-78	2,870.37	−6,745.79	439.39	−7,185.18	12,672.99
600 acres in Section 6		31,874.95	7,791.86	1,728.00	6,063.86	49,838.22
A. D. Aitken Tr. Royalty		10,381.34	10,018.10	----------	10,018.10	----------
Total Salt Creek (Excluding Sec. 36)		4,650,794.50	4,606,535.70	144,780.61	4,461,755.09	2,816,520.04

191 *Petitioner's Exhibit 1*

Admitted in Evidence Jan. 31, 1935

This Indenture, Made and Entered into this 24 day of July 1911, by and between Wm. G. Henshaw, and Hetty T. Henshaw, Helen W. Henshaw, Tyler Henshaw, Alla S. Chickering, Harry Chickering, Henry D. Nichols, Ethel K. Nichols, E. M. Hall, Lillie T. Hall, F. W. Henshaw, H. J. Knowles, W. H. Metchalf, A. H. Chickering, C. T. Rodolph, Emil Nusbaumer, P. C. Black, parties of the first part, and The Reed Investment Company, a corporation organized and existing under and by virtue of the laws of the State of Colorado, party or parties of the second part,

Witnesseth, that, for and in consideration of the sum of one hundred dollars ($100.00) and other good and valuable considerations, in hand paid to the parties of the first part by the party or parties of the second part, the parties of the first part have granted, bargained, sold, remised, released and quitclaimed, and by these presents do grant, bargain, sell, remise, release, and quitclaim, unto the party or parties of the second part, its or their successors and assigns, heirs, administrators, and executors, all their right, title, interest, and estate in, to, and of the following described property, to-wit:

First. All oil placer mining claims located or held in the names of the parties of the first part, or any of them, according to the extent of their respective interests therein, situate, lying, and being in what are known as the Salt Creek Oil Fields, in Natrona County, Wyoming;

Second. All the right, title, interest, and estate of the parties of the first part, to the extent of their respective interests therein, in a certain lease heretofore granted by the State of Wyoming to William M. Fitzhugh and by the latter assigned to the Midwest Oil Company, and now held by the latter company, said lease being upon section thirty-six, township forty, range seventy-nine west (S. 36, T. 40, R. 97 W.), in Natrona County, Wyoming;

Third. All interests of the parties of the first part, according to their respective rights therein, in, to, and under a certain agreement

between the Stock Oil Company, a Wyoming corporation, and William M. Fitzhugh, affecting the east half of section twenty-five, township forty, range seventy-nine west (E½, Sec. 25, T. 40, R. 79
192 W.), situate in Natrona County, State of Wyoming, which said agreement was heretofore assigned by said William M. Fitzhugh to and is now held by the Midwest Oil Company;

Fourth. All interest of the parties of the first part, according to their respective interests therein, in, to, and under a certain agreement heretofore entered into between H. E. Stock, J. E. Stock, and other individuals, with William M. Fitzhugh, affecting various oil placer mining claims in Salt Creek Oil Fields, situated in Natrona County, Wyoming; and in

Fifth. All other agreements, if any, made and entered into between the said William M. Fitzhugh, H. E. Stock, J. E. Stock, and other associates, or with any other individuals, persons, or corporations, under or by virtue of which any right, title, interest, or estate has inured, or held to have inured to the benefit of the parties of the first part, or any of them, only in so far as the said agreements may have been made in reference to said Salt Creek Oil Field and also not including the Wyoming Central Association lease transaction.

The intention of this conveyance is to transfer and convey, and it is hereby agreed, that it does transfer and convey unto the party or parties of the second part, all of the right, title, interest, and estate of the parties of the first part, or of any or either of them, in and to any and all of the aforesaid lands in which the parties of the first part, or any or either of them, have or hold, legally or equitably, any interest;

To Have and to Hold the above-described property, together with all the right of the parties of the first part in law and equity therein or thereto, together with all oils, gases, petroleum, and other mineral deposits, located in said premises, unto the party or parties of the second part, its or their successors and assigns, heirs, administrators, and executors, forever.

And parties of the first part further agree, that in the event they acquire any further or additional title to any of the property hereby conveyed, they will hold the same for and convey the same to the party or parties of the second part.

193 In Witness Whereof, the parties of the first part have hereunto set their hands and seals, the day and year first above written.

(s) Wm. G. Henshaw [SEAL]
(s) Hetty T. Henshaw [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(s) Helen W. Henshaw [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(s) Tyler Henshaw [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) Alla S. Chickering [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(s) Harry Chickering [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) Henry D. Nichols [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) Ethel K. Nichols [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(s) E. M. Hall [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) Lillie T. Hall [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(s) F. W. Henshaw [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) H. J. Knowles [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) W. H. Metcalf [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) A. H. Chickering [SEAL]
By Wm. G. Henshaw, *her Atty. in Fact.*
(s) C. T. Rodolph [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) Emil Nusbaumer [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*
(s) P. C. Black [SEAL]
By Wm. G. Henshaw, *his Atty. in Fact.*

Parties of the First Part.

_____ _____,
Witnesses to each Signature.

_____ _____ [SEAL]
Trustee for and acting in behalf of
The Reed Investment Company,
Party of the Second Part.

194 State of California, County of Alameda, ss.

Before me, J. L. Meyer, a notary public in and for said county, in the state aforesaid, on this 25th day of July, 1911, per-

sonally appeared Wm. G. Henshaw appearing individually and also as attorney in fact for Hetty T. Henshaw, Helen W. Henshaw, Tyler Henshaw, Ethel K. Nichols, Alla S. Chickering, Harry Chickering, Henry D. Nichols, E. M. Hall, Lilly T. Hall, F. W. Henshaw, H. J. Knowles, W. H. Metcalf, A. H. Chickering, C. T. Rodolph, Emil Nusbaumer, and P. C. Black, said persons being personally known to me to be the persons whose names are subscribed to the foregoing instrument, and thereupon said individuals acknowledged that they, and each of them, made, executed and delivered the said above and foregoing instrument of writing, as their free and voluntary act and deed, and as the free and voluntary act and deed of each of them, for the uses and purposes therein set forth; and said Wm. G. Henshaw thereupon acknowledged to me, that he signed, sealed, executed and delivered the said instrument of writing in behalf of his principals as well as in his own behalf, as their free and voluntary act and deed, and as the free and voluntary act and deed of each of them, acting under a power of attorney from his said principals; all for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and notarial seal this 25th day of July 1911. My commission expires March 5, 1913.

[NOTARIAL SEAL] (s) J. L. MEYER,
Notary Public in and for the County of Alameda, State of California.

Before United States Board of Tax Appeals

Praecipe for the record

Filed Dec. 11, 1936

To the CLERK OF THE UNITED STATES BOARD OF TAX APPEALS:

You will please prepare and transmit to the clerk of the United States Circuit Court of Appeals for the Tenth Circuit within sixty days from the date of filing of the petition for review, as enlarged by appropriate orders of this Board, certified copies of the following documents:

195 (1) The docket entries of the proceedings before the United States Board of Tax Appeals in the above-entitled case:

(2) Original and amended petitions to the United States Board of Tax Appeals and the Commissioner's Answers thereto;

(3) Findings of Fact and Opinion promulgated April 23, 1936;

(4) Decision of the United States Board of Tax Appeals entered June 25, 1936;

(5) Petition for review, including notice of filing of same;

(6) Statement of Evidence as settled or agreed upon, together with the following exhibits or portions of exhibits attached to the Stipulation of Facts:

Exhibit B.
Exhibit C.
Exhibit D.
Exhibit H.
Exhibit I.
Exhibit J.
Portion of Exhibit L–1, as follows:

All of the first page with the exception of the last line referring to the Waiver of Notice. Omit all Waivers of Notice and include balance of the exhibit beginning with the sentence "A written proposal was thereupon presented to the meeting and read to the Directors."

Portion of Exhibit L–2, as follows:

Pages 1, 8, and 9 of the first Deed included therein, omitting all other pages;

Pages 1, 8, and 9 of the second Deed included therein, omitting all other pages;

Pages 1 and 9 of the third Deed included therein, omitting all other pages;

Pages 1, 8, and 9 of the fourth Deed included therein, omitting all other pages; and

196 All of the fifth Deed included therein, consisting of two typewritten pages.

Exhibit N.
Exhibit T–1.
Exhibit T–2.
Exhibit U–1.
Exhibit U–2.
Exhibit U–3.
Exhibit U–4.
Exhibit V.

(7) Petitioner's Exhibit No. 1;

(8) This Praecipe.

The foregoing to be prepared, certified, and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Tenth Circuit.

RANDOLPH E. PAUL,
CHARLES B. MCINNIS,
Attorneys for the Petitioner.
Transportation Bldg., Washington, D. C.

Receipt of a copy of the above Praecipe for the Record is hereby acknowledged this 11th day of December 1936.

MORRISON SHAFROTH,
Attorney for Respondent on Review.

[Clerk's certificate to foregoing transcript omitted in printing.]

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit, viz:

Order of submission

Third Day, April Term, Wednesday, April 14th A. D. 1937

Before Honorable ORIE L. PHILLIPS, Circuit Judge, Honorable SAM G. BRATTON, Circuit Judge, and Honorable T. BLAKE KENNEDY, District Judge

This cause came on to be heard, Harold D. Roberts, Esquire, appearing for petitioner, Helen R. Carloss appearing for respondent.

On motion, petitioner was granted leave to file twenty printed copies of a reply brief in this cause instanter, which was accordingly done.

Thereupon argument was commenced by counsel and continued to the hour of adjournment.

Order of submission

Fourth Day, April Term, Thursday, April 15th A. D. 1937

Before Honorable ORIE L. PHILLIPS, Circuit Judge, Honorable SAM G. BRATTON, Circuit Judge, and Honorable T. BLAKE KENNEDY, District Judge

This cause came on further to be heard, Harold D. Roberts, Esquire, appearing for petitioner, Helen R. Carloss appearing for respondent, and argument by counsel was concluded.

Thereupon this cause was submitted to the court.

United States Circuit Court of Appeals, Tenth Circuit

No. 1516. April Term, 1937

MOUNTAIN PRODUCERS CORPORATION, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

On Petition to Review the Decision of the United States Board of Tax Appeals

August 26, 1937

Before PHILLIPS and BRATTON, Circuit Judges, and KENNEDY, District Judge

Harold D. Roberts (Randolph E. Paul and Valentine B. Havens were with him on the brief), for Petitioner.

Helen R. Carloss, Special Assistant to the Attorney General (James W. Morris and Sewall Key were with her on the brief), for Respondent.

KENNEDY, District Judge, delivered the opinion of the Court.

The Board of Tax Appeals upon an appeal from the Commissioner of Internal Revenue assessed a deficiency tax against the petitioner for the year 1925 in the amount of $67,509.13 and the matter is here upon a petition for a review of the Board's decision. The facts were stipulated before the Board and a brief summary of its findings will suffice in determining the applicable principles of law.

In 1925 the petitioner, Mountain Producers Corporation, owned all of the capital stock of the Wyoming Associated Oil Corporation and a consolidated return was filed upon which the deficiency in controversy was determined. The Wyoming Corporation, organized in 1919, held certain placer mining claims, leases and operating agreements in the Salt Creek Oil Field in Natrona County, Wyoming. After the passage of the Oil and Gas Leasing Act of February 25, 1920, its claims were exchanged for Government leases and later exchanges were made with the Midwest Oil Company and the Wyoming Oil Fields Company for the purpose of consolidating the leaseholds into more compact blocks to decrease the necessity for off-set drilling. On February 1, 1923, the Wyoming Associated entered into a contract with the Midwest Refining Company whereby it agreed to sell to the Refining Company all the oil produced by it in the Salt Creek Oil Field and the Refining Company agreed to purchase such oil until January 1934, which contract provided for a sliding scale of prices to be paid for such oil. It was also provided that as a part of the price for the oil purchased under said contract the Refining Company should drill, case and maintain all wells, find and supply water, install and operate pumps when necessary, clean, shoot and otherwise stimulate production, conduct all development and production operations necessary for the protection and conservation of the oil and gas contained therein. It was further provided that the Wyoming Company should give to the Refining Company free use of all storage facilities, pipe lines, buildings and equipment, and free of charge all oil and gas necessary for drilling operations, and that the Refining Company should take delivery of the oil purchased at the outlet gates of the measuring tanks located at or near the wells on the property.

On the same date, February 1, 1923, the Wyoming Associated Oil Corporation and the Midwest Oil Company as the holder of a certain lease from the State of Wyoming which originated in October 1919, covering all of Section 36, Township 40 North of Range 79 West, entered into an agreement by which the Midwest Oil Company was to hold in trust for the benefit of Wyoming Associated an undivided 50 percent interest in the State lease and in the benefits and net proceeds realized therefrom and from all renewals and extensions thereof, whether such renewals or extensions should be

made in the name of the Wyoming Company or in their joint names. The lease from the State of Wyoming to the Midwest Oil Company under date of April 19, 1923, presently involved, covered school lands which had been at the time of admission of Wyoming to the Union turned over and granted to the State for the benefit of its public schools and provided that the lessee should pay to the State a royalty equal to 65 percent of the market value of the oil and gas at the mouth of the wells, or at the option of the State to deliver the equivalent amount of the oil and gas produced. In its execution the oil in kind was taken by the State. The cash payments received as net proceeds of its properties by the Wyoming Associated from the Midwest Refining Company for the year 1925 were $4,606,535.70, and the cost of production by the Refining Company of the oil produced to realize this sum was $2,816,520.04. The net amount received by the Wyoming Associated for the lease of the State school lands under the trust agreement from the Midwest Oil Company was $185,438.83.

The questions arising under the aforesaid situation are two-fold: (1) What is the gross income upon which the depletion allowance of the Wyoming Associated as the Petitioners' affiliate should be determined?; and (2) is the amount which the Wyoming Associated received under the trust agreement with the Midwest Oil Company from its oil and gas lease with the State of Wyoming exempt from tax?

The applicable statute concerning depletion allowance is the Revenue Act of 1926, Sec. 204 (c) (2), reading as follows:

"In the case of oil and gas wells the allowance for depletion shall be 27½ per centum of the gross income from the property during the taxable year. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph."

The petitioner contends that the gross income from its properties during the taxable year consisted of the total cash payments, plus the cost of production by the Refining Company under its contract providing that the production costs should be a part of the purchase price of the oil, but the Board of Tax Appeals determined otherwise and limited the gross income to the cash payments received.

Counsel admit that there are no cases on all fours with the case at bar. The respondent relies strongly upon the case of Helvering v. Twin Bell Syndicate, 293 U. S. 312, where the point involved the inclusion of cash royalty payments as gross income for the purpose of fixing depletion allowance. It was there held that such royalty payments should be excluded from the gross income. It is apparent, however, from the reading of this decision that it involved a different principle than that now before us. The royalty owners themselves were entitled to the depletion allowance as well as the lessee. The pertinent language is found on page 321:

"At all events, as the section must be read in the light of the requirement of apportionment of a single depletion allowance, we are unable to say that the Commissioner erred in holding that for the purpose of computation 'gross income from the property' meant gross income from production less the amounts which the taxpayer was obliged to pay as royalties. The apportionment gives respondent 27½ percent of the royalties they receive. Such an apportionment has regard to the economic interest of each of the parties entitled to participate in the depletion allowance."

A case more applicable in principle to the determination of our question is Boulton v. Heiner, 3 F. Supp. 372. The court there was confronted with the matter of determining whether or not the value of services under contract should be included with cash payments in fixing the cost of stock for the purpose of ascertaining the profit from a sale thereof. The court says, at page 374:

"The plaintiff claims in the present suit that in addition to the amount of money actually paid by him for the stock in question in order to acquire it, he was compelled by his contract with the other incorporators and with the original owners of the properties taken over by the corporations, to expend labor and effort which was worth at least the sum of $17,500. The uncontradicted testimony shows that this service was agreed upon and rendered; that it was worth $17,500; and that plaintiff received no compensation therefor other than by the right to acquire the stock. Under these circumstances it is our opinion that the plaintiff is entitled to claim that the cost of his stock was not merely $11,500, the amount of money paid, but also $17,500, the value of his services rendered pursuant to his agreement."

We see no just or logical reason why the cost of production of the oil here which was made a part of the purchase price should not be added to the cash payments for the purpose of determining the gross income of the Wyoming Associated. Certainly it should be unless pure technicalities of the taxing laws be invoked. Had the Wyoming Company produced the oil at its own expense, its gross income would have been the amount which it received from the oil sold and the only difference would have been that it would have received in cash the proportionate amount which represented the cost of production. Under such conditions there should be no question of its gross income including the oil produced and sold to cover production costs. It cannot logically be less than an element of gross income because the cost of production by another is a component part of the purchase price of the oil. There is no criticism on the part of the Government either as to the fairness of the purchase price or of the cost of production covered by the contract between the Wyoming Associated and the Midwest Refining and therefore it would seem unnecessary to analyze these schedules; nor can any charge be made that there was any effort on the part of the taxpayer

to enter into a contract for the purpose of favorably affecting its tax liability.

The respondent contends that the adoption of the petitioner's theory would result in the allowance of a double deduction in that if the cost of production should be included as gross income it would be deducted as an expense, while under the head of depletion the appropriate percentage of the amount would be deducted a second time. We cannot see the soundness of this theory. If the Wyoming Associated operated its own properties and produced its oil which it sold for cash, the cost of that production would be deducted as of course in arriving at its net income for taxation purposes; but if it produced the oil which it sold where a part of the proceeds were necessarily used to cover the cost of production, its gross income would be the total amount sold for the purpose of computing depletion allowance. The two matters are clearly distinct, one being the determination of net income and the other depletion allowance and are approached by the taxing statutes from entirely different angles. We think that the Board erred in excluding the cost of production which was a part of the purchase price of the oil, from the gross income of the petitioner's affiliate.

With reference to the second question, the Board held that the amount received by the petitioner's affiliate from the net proceeds of the school lease under its trust agreement with the lessee of the State was not exempt from tax. It may be admitted that the decisions of the Supreme Court place cases of this character upon the border line. The members of the court have been far from unanimous in their views in the more recent cases. In Metcalf & Eddy v. Mitchell, 269 U. S. 514, Mr. Justice Stone in speaking for the court at page 522, says:

"Just what instrumentalities of either a state or the federal government are exempt from taxation by the other cannot be stated in terms of universal application. But this Court has repeatedly held that those agencies through which either government immediately and directly exercise its sovereign powers, are immune from the taxing power of the other."

In Burnet, Commissioner, v. Coronado Oil & Gas Co., 285 U. S. 393, it was held that the lands granted by the United States to the State of Oklahoma for the support of common schools, were leased by the State to a private company for the extraction of oil and gas, the State reserving a part of the gross production for the benefit of its public school fund, the lease was an instrumentality of the State and the application of a Federal income tax derived from the lease by the lessee was unconstitutional. It is true that in Burnet, Commissioner, v. A. T. Jergins Trust, 288 U. S. 508, it was held that under an oil and gas lease made by a city to a private party the receipts of the lessee were not exempt from a Federal tax because the subject taxed was remote from any governmental function and

the collection of the tax did not trench upon the immunity of the state as a sovereign. In the opinion, however, the court distinguishes the Coronado case and the case of Gillespie v. Oklahoma, 257 U. S. 501, by the statement that the burden upon the public was there more definite and direct than in the case under consideration. We think that the Coronado case, which has been criticised but never overruled, must through analogy rule the case at bar, unless the situation of the Wyoming Associated is distinguishable from that of the lessee. Such a contention is made by the respondent through reference to the cases of Wanless Iron Co. v. Commissioner, 75 F. (2d) 799 (C. C. A. 8), and Hobart Iron Co. v. Commissioner, 83 F. (2d) 25 (C. C. A. 6). Those cases were distinguished from the Coronado and Gillespie cases, however, upon the ground that sublessees could not claim exemption from tax since the lessee had parted with any direct relationship with the State.

In the case at bar we find the lessee and the taxpayer bound together by a trust agreement entered into before the lease by the State was made by which they were to have equal rights in the lease itself and the net proceeds realized from it in whichever name of the parties the lease or any renewal or extension should stand. In substance and effect the Wyoming Associated was as much a lessee of the lands as was the Midwest Oil Company, the lessee in name. In Central Life Assurance Society v. Commissioner, 51 F. (2d) 939, at page 941, it was said:

"Tax laws are essentially practical in their purposes and application, and the federal income tax laws are no exception. While, for the purpose of convenience and certainty in collection of such taxes, it is sometimes provided that those who collect income for others shall pay therefrom the taxes thereon, yet a cardinal purpose of the income tax laws is to tax the income to the person who has the right or beneficial interest therein and not to throw the burden upon a mere collector or conduit through whom or which the income passes. Shellabarger v. Commissioner, 38 F. (2d) 566, 567 (C. C. A. 7); Young v. Gnichtel, 28 F. (2d) 789 (D. C. N. J.); O'Malley v. Eaton, 24 F. (2d) 436 (D. C. Conn.); also compare U. S. v. Robbins, 269 U. S. 315, 327, 328, 46 S. Ct. 148, 70 L. Ed. 285; Kaufmann v. Commissioner, 44 F. (2d) 144, 146 (C. C. A. 3); Mitchel v. Bowers, 15 F. (2d) 287, 289 (C. C. A. 2). It is also a basic principle in the application of such laws that substance and not mere form be regarded as governing."

Many cases are cited in the briefs in addition to those to which reference herein has been made, but we think they fail to throw any additional light upon the subject under discussion and therefore have not been reviewed.

For the reasons stated, the decision of the Board of Tax Appeals upon both points will be reversed and the case remanded for further proceedings in accordance with this opinion.

PHILLIPS, Circuit Judge, dissenting.

The declaration of trust of February 1, 1923, in part, read:

"Whereas The Midwest Oil Company, a corporation of the State of Arizona, is the holder of a certain lease from the State of Wyoming, dated the 1st day of October 1919,[1] and

"Whereas The Wyoming Associated Oil Corporation, a corporation of the State of Delaware, is entitled to receive the undivided share in the benefits and net proceeds realized by The Midwest Oil Company under said lease and all renewals and extensions thereof, as hereinafter set forth;

"Now, Therefore, In consideration of the premises and in consideration of other good and valuable considerations paid to The Midwest Oil Company by the Wyoming Associated Oil Corporation, said The Midwest Oil Company doth hereby declare that it holds an undivided fifty per cent (50%) interest in said lease and in the benefits and net proceeds to be realized therefrom and all renewals and extensions thereof for the use and benefit of said The Wyoming Associated Oil Corporation, and reserves the beneficial interest in the remaining fifty per cent (50%) thereof to itself."

The contract of February 1, 1923, in part, read:

"This Agreement Made as of the First day of February, A. D. 1923, between The Midwest Oil Company, a corporation of the State of Arizona, and Wyoming Oil Fields Company, a corporation of the State of Wyoming, and The Wyoming Associated Oil Corporation, a corporation of the State of Delaware, parties of the first part, hereinafter called the 'Producing Companies,' and The Midwest Refining Company, a corporation of the State of Maine, party of the second part, hereinafter called the 'Refining Company'; Witnesseth:

"Whereas The Producing Companies among them own in the several fractions hereinafter set forth leases covering the following described lands in the Salt Creek Oil Field, Natrona County, Wyoming, to-wit: * * *

"The so-called 'State School Lease,' * * * held in trust by the Midwest Oil Company for the benefit of The Midwest Oil Company to the extent of an undivided 50 per cent interest and for the benefit of the Wyoming Associated Oil Corporation to the extent of an undivided 50 per cent interest."

The lease of April 19, 1923, from the state of Wyoming to the Midwest Oil Company covering the school section provided that it should not be assigned without the consent and approval of the state. The record does not disclose the consent or approval by the state of any assignment of an interest in the lease to Associated Oil Corporation. It seems to me when regard is had for the substance of the transactions, what Associated Oil Corporation really acquired was a right to share equally with the Midwest Oil Company in the net profits if any, derived from the operation of the lease. The right to manage and operate the lease was vested wholly in the

[1] The school section lease.

Midwest Oil Company. It alone contracted with the state. The state looked to it alone for the performances of the covenants of the lease. If there were no net profits, Associated Oil Company acquired nothing and it was not expressly obligated to contribute to any losses. The tax was laid upon the net profits after they were segregated and divided between the Associated Oil Corporation and the Midwest Oil Company.

Under these circumstances, was the one-half of the net profits, when segregated and paid to the Associated Oil Corporation, immune from federal taxation? The immunity from taxation accorded to governmental instrumentalities is for the protection of the government in its exercise of governmental functions and extends no further than is necessary for that purpose. Indian Territory I. Oil Company vs. Board of Equalization, 288 U. S. 325, 327. The effect of the decisions since Gillespie vs. Oklahoma, 257 U. S. 501, has been to restrict rather than to extend this doctrine of immunity. In Burnet vs. Coronado O. & G. Co., 285 U. S. 393, 398, the court said:

"We are disposed to apply the doctrine of Gillespie vs. Oklahoma strictly and only in circumstances closely analogous to those which it disclosed."

In Fox Film Corp. vs. Doyal, 286 U. S. 123, 128, the court said:

"The principle of the immunity from state taxation of instrumentalities of the Federal Government, and of the corresponding immunity of state instrumentalities from Federal taxation—essential to the maintenance of our dual system—has its inherent limitations. It is aimed at the protection of the operations of government (McCulloch v. Maryland, 4 Wheat. 316, 436), and the immunity does not extend 'to anything lying outside or beyond governmental functions and their exertions.' Indian Motocycle Co. v. United States, 283 U. S. 570, 576, 579. Where the immunity exists, it is absolute, resting upon an 'entire absence of power' (Johnson v. Maryland, 254 U. S. 51, 55, 56), but it does not exist 'where no direct burden is laid upon the governmental instrumentality, and there is only a remote, if any, influence upon the exercise of the functions of government.' Willcuts v. Bunn, 282 U. S. 216, 225."

See also Helvering vs. Atlas Life Insurance Co. (C. C. A. 10), 78 F. (2d) 166, 168; Taber vs. Indian Territory I. O. Co., 300 U. S. 1, 3, 4.

In Jaybird Mining Co. vs. Weir, County Treasurer, 271 U. S. 609, an attempt was made to lay an ad valorem tax upon ores mined under a lease of restricted Indian land and in the bins on the land. A tax was assessed on the ores in mass, the royalties or equitable interest of the Indians not having been paid or segregated. The court said: "The lessee is an agency or instrumentality employed by the government for the development and use of the restricted land and to mine ores therefrom for the benefit of its Indian Wards," and held that the tax was laid upon a federal governmental instrumentality. However, in the later case of Indian Territory I. O. Co. vs. Board of Equalization, 288 U. S. 325, where an ad valorem tax was

laid upon the lessee's share of the ore produced under a restricted Indian lease after the royalties or equitable interests of the Indian lessors had been segregated and paid to them, immunity was denied. In the latter case the court said:

"There is a recognized distinction between a non-discriminatory tax upon the property of an agent of government, albeit the property is used in, or has relation to, the business of the agency—where there is only a remote, if any, influence upon the exercise of the functions of government—and a tax which is deemed to impose a direct burden upon the exertion of governmental powers."[2]

In Burnet vs. A. T. Jergins Trust, 288 U. S. 508, the city of Long Beach, California, made an oil and gas lease to the Jergins Trust covering part of a tract of land owned by the city and used by it for water supply and other purposes. Under the lease the oil and gas recovered was jointly sold by the parties to the lease and the proceeds were divided in stated proportions between them. The Commissioner of Internal Revenue proposed a deficiency in income taxes on account of the proceeds derived by the Jergins Trust from the sale of oil. The Jergins Trust asserted that the income was immune from taxation. The court said:

"If the respondent is exempt from the exaction the conclusion must follow because the tax directly burdens the functions of the state acting through the city of Long Beach. Considerations which have led to the condemnation of taxes in other circumstances are here absent. The levy is not upon the property of the municipality, nor upon the income it derives from its property, is not upon the city's share of the oil recovered, the lease, or the gross income therefrom. The law measures the assessment by the net income of the respondent, whose operations are carried on in a private and not in a public capacity for the personal gain of its cestuis que trustent. The government asserts that the incidence of the tax is so remote from the activities of the municipality as to have no substantial adverse effect upon them. The respondent insists that as lessee of the lands in question it is a governmental agency and any tax laid upon its income directly burdens governmental functions. * * *

"The application of the doctrine of impied immunity must be practical (Railroad Co. v. Peniston, 18 Wall. 5, 31, 36) and should have regard to the circumstances disclosed. We think that in the present instance the subject of the tax is so remote from any governmental function as to render the effect of the exaction inconsiderable as respects the activities of the city. Compare Alward v. Johnson, 282 U. S. 509, 514. Its collection is not inconsistent with and does not trench upon the immunity of the state as a sovereign. The income of the respondent from the lease is not immune from federal income tax."

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[2] See discussion of these cases in Tabor vs. Indian Territory I. O. Company, 300 U. S. 1, 4, 5.

It has been held that the income derived by a sub-lessee under, or an assignee of a mineral lease from a state of lands owned by the state, is not immune from taxation although the sub-lessee or assignee is required by the terms of the lease to perform the obligations of the lessee under the original lease from the state. Helvering vs. Atlas Life Ins. Co. (C. C. A. 10), 78 F. (2d) 166; Hobart Iron Co. vs. Commissioner (C. C. A. 6), 83 F. (2d) 25 (Cert. denied, 299 U. S. 543); Wanless Iron Co. vs. Commissioner (C. C. A. 8), 75 F. (2d) 779 (Cert. denied, 295 U. S. 765). Here the Associated Oil Company had no direct contractual relation with the state. Its right under the contracts with the Midwest Oil Company was to share in the net proceeds of the lease. The tax was laid upon the Associated Oil Company's share of the net proceeds of the lease after they had been segregated and divided.

It is my opinion that the incidence of the tax is so remote in its influence or effect upon the exercise by the state of its governmental functions as to have no substantial adverse effect upon them. I, therefore, respectfully dissent from so much of the majority opinion as holds that the net proceeds derived by the Associated Oil Company under the declaration of trust of February 1, 1923, are immune from taxation by the federal government. In all other respects I concur in the majority opinion.

A true copy.

Attest:

Clerk, U. S. Circuit Court
of Appeals, Tenth Circuit.

Judgment

Thirty-fourth Day, April Term, Thursday, August 26th, A. D. 1937

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the decision of the United States Board of Tax Appeals in this cause be and the same is hereby reversed; and that this cause be and the same is hereby remanded to said United States Board of Tax Appeals for further proceedings in accordance with the opinion of this court.

(On October 1, 1937, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States Board of Tax Appeals.)

Clerk's certificate

United States Circuit Court of Appeals, Tenth Circuit:

I, Albert Trego, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains a full, true and complete copy of the transcript of the record from the United States Board of Tax Appeals, and full, true and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said Circuit Court of Appeals, No. 1516, wherein Mountain Producers Corporation was petitioner and Commissioner of Internal Revenue was respondent, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 16th day of November A. D. 1937.

[SEAL]

ALBERT TREGO,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1937

Order allowing certiorari

Filed January 3, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, and the case is assigned for hearing immediately following No. 446.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) Enter Attorney General. File No. 42,081. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 600. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner vs. Mountain Producers Corporation. Petition for writ of certiorari and exhibit thereto. Filed November 26, 1937. Term No. 600 O. T. 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1938